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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906

No. 217

PUBLIC UTILITIES COMMISSION OF RHODE ISLAND
AND NARRAGANSETT ELECTRIC LIGHTING COM-
PANY, PETITIONERS,

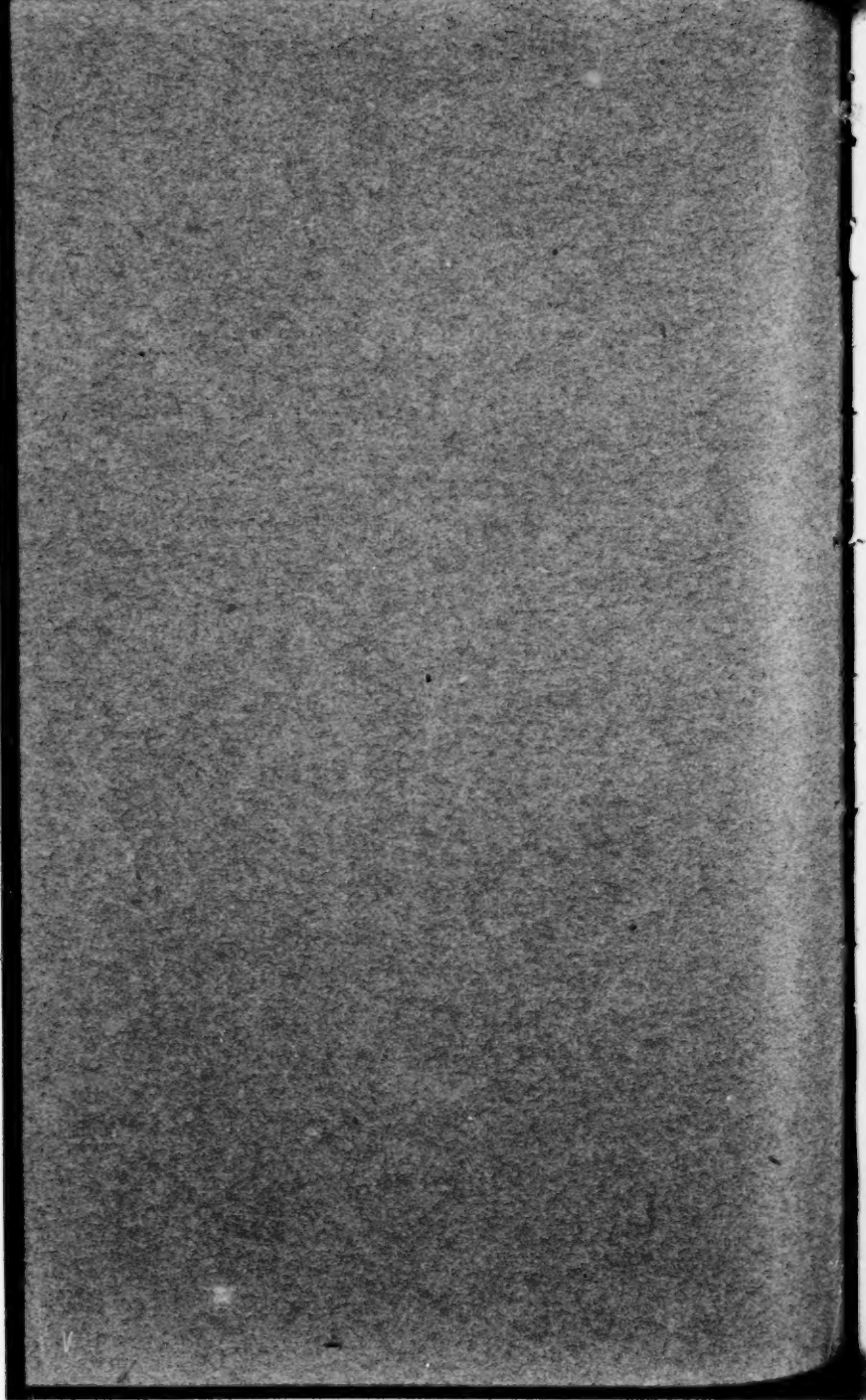
ATTLEBORO STEAM & ELECTRIC COMPANY

ON WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF THE STATE
OF RHODE ISLAND

PRINTED FOR THE COMMISSIONER OF THE GENERAL LAND OFFICE

WASHINGTON: GOVERNMENT PRINTING OFFICE, 1906

(51,404)



(31,464)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 741

PUBLIC UTILITIES COMMISSION OF RHODE ISLAND
AND NARRAGANSETT ELECTRIC LIGHTING COM-
PANY, PETITIONERS,

vs.

ATTLEBORO STEAM & ELECTRIC COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF RHODE ISLAND

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District Court of the United States 1

DISTRICT OF RHODE ISLAND

ATTLEBORO STEAM AND ELECTRIC COMPANY

v.

NARRAGANSETT ELECTRIC LIGHTING COMPANY.

Equity No. 173

Opinion.

February 12, 1924.

2

BROWN, J.—This is a bill in equity brought by the Attleboro Steam and Electric Company, a Massachusetts Corporation, against the Narragansett Electric Lighting Company, a Rhode Island Corporation, to enjoin the Defendant from cutting off the Plaintiff's supply of electrical energy so long as the Plaintiff conforms to the terms of a written contract dated May 8, 1917, whereby the Defendant undertook to sell and deliver to the Plaintiff during a term of twenty years all the electrical energy to be supplied by the Attleboro Company to its customers in Attleboro, Massachusetts.

The bill alleges that the Plaintiff has no generating plant and is unable to obtain from any source, other than the Defendant, any substantial supply of electrical energy, and that if the Defendant's threat to cut off Plaintiff's supply of electrical energy should be carried out, the City of Attle-

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Opinion

boro would be deprived of electrical energy and power to the incalculable damage of the Plaintiff and of the citizens of Attleboro.

The principal dispute between the parties arises from the demand by the Narragansett Company for an increased charge for electrical energy.

The Plaintiff insists that the rate fixed by the contract of May 8, 1917 and approved by the Public Utilities Commission of the State of Rhode Island, is still in force. This rate is shown in schedule described as R. I. P. U. C. No. 68 (Exhibit 2 in the present case).

5 The Defendant contends that this Contract rate has been superseded by a new schedule of rates, applicable to this contract alone, filed on April 6, 1921 with the Public Utilities Commission and by its order of April 27, 1921, put in effect as R. I. P. U. C. No. 101 (Exhibit 4 in the present case).

As the Rhode Island "Public Utilities Act", Public Laws 1912, Chapter 795, was in force before the making of the contract of May 8, 1917, and as the Narragansett Electric Lighting Company was within the term "public utility" as defined by that act, the Attleboro Company had full notice that it was dealing with a Rhode Island Corporation of limited power to contract, and subject to continuous regulation in the public interest through
6 an administrative legislative agent, the Public Utilities Commission.

The Plaintiff contends that the contract of May, 1917 relates to interstate commerce and that the Rhode Island statute affecting public utilities was intended to regulate only the rights of residents of Rhode Island with respect to service rendered in that state.

As it is apparent that losses upon contracts for the delivery of electrical energy for use outside the state might affect the financial ability of the Narragansett Company to render service in Rhode Island at reasonable rates and that there might thus result a discrimination in rates which would be unfavorable to residents of Rhode Island and favorable to the residents of Massachusetts engaged in the same lines of industry, we should be reluctant to accept the contention that though the corporate capacity of the Narragansett Company to contract with citizens of Rhode Island is plainly limited and subject to legislative control through the Public Utilities Commission, yet in making contracts with corporations or citizens of contiguous or remote states for the supply of electricity generated in Rhode Island, it is free from such control. 8

One who deals with a corporation whether he be a citizen of the same or another state is chargeable with knowledge of its corporate power, and of any statutory limitation upon, or reservation of legislative control over, its exercise of corporate powers granted by the state of its creation.

Without further discussion of the question whether or not the contract relates to interstate commerce and whether the acts of the Public Utilities Commission relevant to the present case are invalid as an attempt to fix rates for interstate commerce, we may assume for the purposes of this case that we have to deal with a contract made by the defendant with a Rhode Island Corporation whose contractual powers were limited and subject to continuous regulation by the Public Utilities Commis- 9

Opinion

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sion of Rhode Island, at least in the absence of any attempt by Congress to act under its power to regulate interstate commerce.

See *Pennsylvania Gas Company v. Public Utilities Commission*, 252 U. S., 23, 29, 31.

The principal question in this case is what effect upon a special rate formerly established by contract between the parties and approved by the Public Utilities Commission of Rhode Island, is to result from the following proceeding before the Public Utilities Commission.

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12

NARRAGANSETT ELECTRIC LIGHTING COMPANY
EXECUTIVE OFFICES

TURKS HEAD BUILDING
PROVIDENCE, R. I.

Public Utilities Commission,
State of Rhode Island.

Gentlemen :

We are filing herewith R. I. P. U. C. No. 101, cancelling R. I. P. U. C. No. 68 for the purpose of increasing the rate paid by the Attleboro Steam and Electric Company for electricity.

14

We respectfully request that you waive the statutory notice and allow this rate to become effective on all electricity billed on and after April 1, 1921.

Very truly yours,

(Signed) E. A. BARROWS,
President.

STAMPED
RECEIVED
April 6, 1921

PUBLIC UTILITIES COMMISSION
STATE OF RHODE ISLAND

STAMPED
In Regular Session
Public Utilities Commission 15
April 27, 1921
Consent Granted
Order No. 584
G. A. Carmichael,
Secy.

A true copy.

Attest :

(Sgd) GEORGE A. CARMICHAEL,
Secretary.

Opinion

R. I. P. U. C. No. 101
Cancelling R. I. P. U. C. No. 68

NARRAGANSETT ELECTRIC LIGHTING COMPANY

*Special rate to Attleboro Steam and Electric
Company*

CHARACTER OF SERVICE

17 Electricity to be delivered to the Attleboro Company at the East Providence sub-station of the Narragansett Company or at such other point or points as may be mutually agreed upon by the parties at 22,000 or other agreed voltage. Said electricity to be in the form of three phase sixty cycles, alternating current.

CONDITIONS

The Attleboro Company to receive electricity at said East Providence Sub-Station and to bear all expense of transmitting the electricity thus received.

RATE

18 (a) A service charge of such amount as will equal the cost to the Narragansett Company of taxes, insurance, depreciation, obsolescence and any other fixed charges and net the Narragansett Company an eight per cent dividend upon that portion of the cost of the plant which can properly be allocated to the generation of electricity for and the delivery of such electricity to the Attleboro Company.

(b) A charge per kilowatt hour for all electricity delivered which shall be equal to the cost per kilowatt hour to the Narragansett Company of generating and delivering such electricity to the Attleboro Company at said point of delivery plus a fixed addition thereto of 1 mill per kilowatt hour.

(c) A charge equal to any and all taxes paid by the Narragansett Company on account of or having relation to the electricity generated for or sold or delivered to the Attleboro Company or any payments receivable or received by the Narragansett Company therefor, including the payment received as a service charge or otherwise incidental to or arising out of the service rendered or to be rendered by the Narragansett Company to the Attleboro Company. 20

DISCOUNTS

The above rate is net.

TERM OF CONTRACT

April 1, 1921 to April 1, 1938.

Effective on all electricity billed on and after April 1, 1921.

(Stamped)

RECEIVED

April 6, 1921. 21

PUBLIC UTILITIES COMMISSION STATE
OF RHODE ISLAND.

A true copy.

Attest:

(Signed) GEORGE A. CARMICHAEL,

Secretary.

PUBLIC UTILITIES COMMISSION OF
RHODE ISLAND.

- 23 Petition of Narragansett Electric Lighting Company filed with accompanying schedules on the sixth day of April, A. D. 1921 requesting waiver of statutory thirty days notice upon a certain rate schedule R. I. P. U. C. Number 101, cancelling R. I. P. U. C. Number 68, for the purpose of increasing the rate paid by the Attleboro Steam and Electric Company for electricity considered on the sixth day of April A. D. 1921 at an informal hearing at which representatives of both companies were in attendance and heard.

It appearing that a continuance of the operation of the terms of the rate contract between said companies would result in a loss to the petitioning company and would therefore discriminate against its other consumers, and action upon said petition having been deferred by the Commission in order that said companies might continue negotiations for the purpose of arriving at a mutually satisfactory and equitable modification of said rate contract.

It now appearing that such negotiations have been without result.

- 24 Upon consideration, it is

ORDERED: That, for good cause shown, said Narragansett Electric Lighting Company be and it hereby is authorized to put into effect without the statutory publication and notice to the Commission, tariff R. I. P. U. C. Number 101, cancelling

R. I. P. U. C. Number 68, for the purpose of increasing the rate paid by the Attleboro Steam and Electric Company for electricity.

April 27, 1921.

No. 584.

A true copy.

Attest:

(Signed) GEORGE A. CARMICHAEL,
Secretary.

The Defendant, Narragansett Electric Lighting Company, contends that it has followed the procedure prescribed in the last paragraph of Section 48 of the Public Utilities Act of 1912, Public Laws of Rhode Island, Chapter 795, as amended by Chapter 1651, Public Laws 1918.

26

"Sec. 48. (As amended by Chapter 1651, Public Laws, 1918.) Every public utility shall file with the commission within a time to be fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection therewith or performed by any public utility controlled or operated by it. A copy of so much of said schedules as the commission shall deem necessary for the use of the public shall be printed in plain type, or typewritten, and kept on file in every station

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or office of such public utility where payments are made by the consumers or users, open to the public in such form and place as to be readily accessible and conveniently inspected, and as the commission may order. The commission may determine and prescribe the form in which the schedules, required by this section to be kept open to public inspection, shall be prepared and arranged, provided, that with respect to public utilities subject to the federal "Act to Regulate Commerce," so-called, the form of such schedules shall be that from time to time prescribed by the Interstate Commerce Commission. No change shall be made in the rates, tolls, and charges which have been filed and published by any public utility in compliance with the requirements of this section, except after thirty days' notice to the commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rates, tolls or charges will go into effect. Whenever the commission receives such notice of any change or changes proposed to be made in any schedule filed under the provisions of this section, it shall have power either upon complaint as specified in Section eighteen hereof, or upon its own motion and upon such notice as provided for in Section twenty hereof to hold a public hearing and make investigation as to the propriety of such proposed change or changes. After notice of any such investigation, the commission shall have power by any order

served upon the public utility affected to suspend the taking effect of such change or changes pending the decision thereon, but not for a longer period than three months beyond the time when such change or changes would otherwise take effect. After such hearing and investigation either upon complaint as specified in Section eighteen hereof or upon its own motion, the commission may make such order in reference to any proposed rate, toll or change as may be proper. At any such hearing involving any proposed increase in any rate, toll or charge, the burden of proof to show that such increase is necessary in order to obtain a reasonable compensation for the service rendered shall be upon the public utility: 32

PROVIDED, that the commission may, in its discretion and for good cause shown, allow changes within less time than required by the notice herein specified, and without holding the hearing and investigation herein provided for or modify the requirements of this section with respect to filing and publishing tariffs either in the particular instance or by general order applicable to special or particular circumstances or conditions."

The Plaintiff contends that procedure under that paragraph did not result in a finding of the commission that the old rate was unreasonable or that the new rate was reasonable, and that the filing of a schedule of changed rates under that Section cannot accomplish the result of abrogating contract rates. 33

Plaintiff relies upon *Wichita Railroad v. Public Utilities Commission*, 260 U. S. 48, 56, 57.

The Defendant attempts to distinguish this case as a decision upon a procedural point under a statute different in that it expressly required a finding of the commission as to the unreasonableness of the old rate and the reasonableness of the new rate.

But we cannot regard Section 48 as indicating that a contract rate can be abrogated without a finding after a hearing and investigation, that it is unreasonable.

The Commission in Section 48 is given power to make such order as may be proper after hearing and investigation and after the Public Utility has sustained the burden of proof as to necessity.

Should we assume, as Defendant contends, that the Public Utilities Act contains no other provision which in terms is applicable and that therefore the right of the Public Utility to change a contract rate must be worked out under Section 48, it would follow that any authority of the Commission to make such order as "may be proper" and as should determine the necessity, in the public interest to make a change, cannot be exercised without a determination of the propriety of the change.

Furthermore it is said at page 59 of said opinion :

"In creating such an administrative agency the legislature, to prevent its being a pure delegation of legislative power, must enjoin upon it a certain course of procedure and certain rules of decision in the performance of its function."

In view of the provisions of Section 21 of the Act, which fixes the rules for decision, and makes the power of the Commission to institute new rates conditional upon a finding that existing rates are "unjust, unreasonable, insufficient or unjustly discriminatory, or to be preferential or otherwise in violation of any of the provisions of the Act" as well as upon a finding that the substituted rate "shall be just and reasonable," it cannot be held that it was the legislative intention by a mere proviso in Section 48 to dispense with such findings when the Public Utility itself seeks relief under Section 48.

It seems clear that the Public Utility cannot by a mere consent of the Commission dispense with proceedings or rules of decision clearly laid down in Section 21 of the Act and also in the body of Section 48 preceding the proviso.

In *Arkansas Gas Company v. Railroad Commission*, 261 U. S. 379, on pages 382 and 383 it is said:

"While a State may exercise its legislative power to regulate public utilities and fix rates, notwithstanding the effect may be to modify or abrogate private contracts (*Union Dry Goods Co. v. Georgia Public Service Corp.*, 248 U. S. 372, 375; *Producers Transportation Co. v. Railroad Comm.*, 251 U. S. 228, 232), there is, quite clearly no principle which imposes an obligation to do so merely to relieve a contracting party from the burdens of an improvident undertaking. The power to fix rates, when exerted, is for the public welfare, to which private contracts must yield; but it is not an independent legislative function to vary

or set aside such contracts, however unwise and unprofitable they may be. Indeed the exertion of legislative power solely to that end is precluded by the contract impairment clause of the Constitution. The power does not exist *per se*. It is the intervention of the public interest which justifies and at the same time conditions its exercise."

41 In the records of the proceedings of the Commission we find no sufficient statement of any finding made after hearing and investigation upon the question of the unreasonableness of the contract rate or of the reasonableness or propriety of the new rate unless in the following recital:

"It appearing that a continuance of the operation of the terms of the rate contract between said companies would result in a loss to the petitioning company and would therefore discriminate against its other customers."

The finding that the contract was unprofitable and therefore discriminatory rested upon *ex parte* statement and moreover is a *non sequitur*.

42 That the initial return was low and that profit was expected during later years was stated in the Defendant's application to the Commission for approval of the contract rates. There was no finding that a present loss would result in rendering the contract as a whole unprofitable. *New York and Queens Gas Company v. McCall*, 245 U. S. 345, and *Puget Sound Traction, Light and Power Company v. Reynolds*, 244 U. S. 574.

Before a contract can be interfered with under the police power it must appear that the contract does in some manner affect adversely the welfare of the public.

There is nothing in the records to show that the Defendant brought to the notice of the Commission, any evidence that the company would be unable to perform its full duty to the community whose interest it is the function of the committee to protect.

The Plaintiff relies upon the contract. By answer the Defendant as a justification for its demand for an increased rate and for its threat to cut off the Plaintiff's supply of electricity as a means of coercion to pay such increased rate sets up its own action in filing an increased rate, and also the action of the Public Utilities upon its request for a waiver of the statutory notice and for allowing the rate to become effective.

Assuming that the Public Utilities Act afforded no other mode of relief than procedure under Section 48 to enable the defendant on grounds of public interest to abrogate the terms of the contract with respect to rates, it was still the duty of the defendant under the statute *to sustain the burden of proof* that the increase was necessary in order to obtain a *reasonable compensation for its service*. It was also the duty of the Commission to require proof sufficient to sustain this increase.

As the defendant has not invoked relief through the exercise of the power of the Commission as a legislative agent to determine the question of the unreasonableness of the old rate and the reasonableness of the new rate but merely to relieve it

Opinion

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from statutory requirements as to notice, its only defense is its own act in increasing the rate. It has introduced no other justification than the consent of the Commission to its request that it be made effective at once.

It has failed therefore to show that the legislative power delegated to the Commission in the public interest, has ever been exercised in the interest of the public in any mode pointed out in the Public Utilities Act.

The defendant is subject to public regulation only to the extent of the public interest in its business.

47 Even if the Commission had received an *ex parte* statement that a single contract was for the time being unprofitable, this was far from establishing the fact that the public interest had been injuriously affected.

Should the defendant be permitted to carry out its threat of cutting off the supply of electrical energy there would result great interference with plaintiff's business and damages difficult to estimate in an action at law. The case is therefore a proper one for equitable relief by injunction against coercion to yield to an illegal demand.

American Railroad Company of Porto Rico v. South Porto Rico Sugar Company, C. C. A., 1st Circuit, November 24, 1923, 293 Fed. 670.

48

It is also urged that the Plaintiff has not adopted and exhausted its remedies under the Public Utilities Act, Section 18, by complaint before the Commission, with an appeal to the Supreme Court of Rhode Island under Section 34.

The question that would arise under Section 18 would be as to the reasonableness of the rate, an administrative question. The Plaintiff here does

not raise that question but only the question whether the Defendant's claim that it has been relieved by legislative authority from the contract rate has any legal foundation. It does not raise the question of the reasonableness *per se* of what is claimed to be a newly established rate—it claims merely that nothing has been done by the Defendant or the Commission which has the legal effect of changing the old rate.

This is a judicial question of which this court has jurisdiction in a suit between citizens of different states. While the Supreme Court of the State of Rhode Island under Section 34 has jurisdiction on appeal from an order of the commission not only as to questions of unreasonableness of rates but as to the unlawfulness of an order, this latter jurisdiction over a purely judicial question is not exclusive of the Federal jurisdiction in a suit between citizens of different states. There seems to be no reason why the right of the Plaintiff to seek an injunction against a threatened injury and to escape unlawful coercion to pay a rate not established as a reasonable rate in accordance with the Public Utilities Act, should be subjected to the condition that it should first apply to the Commission to reverse its order—*American Railroad Company of Porto Rico v. South Porto Rico Sugar Company*, 293 Fed. 670; *Mitchell Coal Company v. Pennsylvania Railroad Company*, 230 U. S. 247; *People of Porto Rico v. American Railroad Company of Porto Rico*, 254 Fed., pages 367, 377, 378. 50

But one decision of the Supreme Court of Rhode Island relating to the Public Utilities Act has been cited—*Rivelli v. Providence Gas Company*, 44 R. I. 76, 77, 78, Dec. 9, 1921: 51

"The schedule of rates was filed by the Gas Company with the Commission as required by Sec. 48, Chap. 795, Public Laws, 1912, known as the Public Utilities Act, which provides, among other things, that no change shall be made in existing rates, excepting after thirty days' notice to the Commission and to the public of the changes proposed to be made in the schedule then in effect, and the time when the change of rates will go into effect. The commission has no authority to fix rates for a public utility excepting when, after a hearing and investigation, it finds that the existing rates are unjust, unreasonable, insufficient or unjustly discriminatory, or to be preferential or otherwise in violation of the provisions of said Public Utilities Act. Sec. 21, Chap. 795, Public Laws, 1912."

While this case is not directly in point it refers to and recognizes Section 21 of this Act as defining the authority of the Commission and as establishing the rules of decision applicable in fixing rates. Section 48 should be construed consistently with Section 21, and the proviso of Section 48 should not be construed inconsistently with the body of Section 48 and with Section 21.

The Defendant further contends that the mere filing of a new schedule is in itself a valid method of changing rates, and that even if the allowance of the filing of the new rate by the Commission in accordance with Section 48, did not amount to a finding as to the reasonableness of the rates, it yet waived the provision as to notice of changes

and permitted the Defendant at an earlier time to exercise its own right to change a rate. It cites

- Pub. Ser. Com. v. Pavilion Nat. Gas Co.*,
232 N. Y. 146 (1921);
*Town of North Hempstead v. Pub. Ser.
Corp.*, 231 N. Y. 447 (1921);
Suburban Water Co. v. Oakmont Borough,
268 Pa. 243 (1920);
Duquesne Light Co. v. Pub. Ser. Com.,
117 Atl. 63 Pa., (1922);
North Coast Power Co. v. Kuykendall,
201 Pac. 780 Wash. (1921);
Minneapolis, etc. R.R. v. Menasha W. W. 56
Co., 159 Wis. 130 (1914);
Cleveland and Eastern Traction Co. v.
Pub. Ser. Com. P. U. R. 1923 D, 853
(Ohio Sup. Ct.);
*Harrison Electric Co. v. Citizens Ice &
Storage Co.*, 232 S. W. 932 (Ark. 1921);
V. & S. Bottle Co. v. Mountain Gas Co.,
261 Penn. 523 (1918);
*Denver & South Platte Ry. Co. v. City of
Englewood*, P. U. R., 1916 E. 134 (Colo-
rado Sup. Ct.).

It seems evident however that the Defendant cannot itself exercise the police power of the State to relieve it in the public interest from a burdensome contract.

57

Nor can its own judgment be accepted by this Court as a sufficient ground for disregarding the contract rights of the Plaintiff. *Rutland R. Lt. & Power Co. v. Burditt*, 94 Vt. 421, 422. In re *Searsport Water Co.*, 118 Maine 382, 393.

The question of the reasonableness of what it has attempted to do, and whether the public interest is such as to override the obligation of its contract, involves an administrative question which cannot be determined by the Defendant or by this Court.

59 The statutory commission was created by the Legislature to determine such questions, and the proper course is to obtain that judgment. Legislative relief under reserved powers should be sought from the Legislature's administrative agent, the Public Utilities Commission. The result of proceedings before the Commission fails to show that the Defendant procured a finding of the Commission that it was entitled to such relief, or that the Commission in allowing a new schedule to be filed, added anything of force to the act of the Defendant in the filing of the rate.

The practical effect of what was done is the same as if after filing of the rate, the period of thirty days, fixed by Section 48 for notice had elapsed without action by the Commission.

The change therefore represents only the act of the Defendant alone and this is no ground for disregarding the contract right of Plaintiff.

60 The power of the Commission to fix a rate which shall relieve a contracting party from the obligations of a contract, must be exercised as provided by the Rhode Island statute, which when interpreted as the Supreme Court of the State has interpreted it in *Rivelli v. Providence Gas Co.*, 44 R. I. 76, 78, requires a finding in accordance with Section 21.

Wichita Railroad & Light Company v. Public Utilities Commission of the State of Kansas, 260 U. S. 48, seems therefore not distinguishable on the ground that the statutory requirements are substantially different.

It is further urged that the order of the Commission set up in Defendant's answer is not subject to collateral attack.

But the legal objections to the defendant's new schedule involve no question of administrative discretion as to the reasonableness of this rate, but questions of law as to the effect of a proceeding under the proviso of Section 48 and as to the statutory powers of the Commission.

62

Of such questions the Court has jurisdiction without preliminary resort to the Commission—Great Northern Railway Company v. Merchants Elevator Company, 259 U. S. 285, page 295.

I am of the opinion that the Plaintiff is entitled to an injunction to prevent damages from interference with its business and to prevent coercion to compel compliance with demands for a rate *which is not established in accordance with the provisions of the Public Utilities Act*, and that such injunction should continue until a new rate shall be established *by act of the Commission in accordance with the provisions of that act*. *Relief by injunction however should be granted only on condition of the performance by the Plaintiff of its obligation to pay according to the terms of the contract.*

63

If as the brief states it has held the funds with which to make payment in separate deposits ready to be turned over upon receipt of a correct statement of the amount due, which it could not have

without information from Defendant, it seems right to require not only payment of the amount due as of the date when payable, but interest thereon at such rate as has been earned on such deposits, since it would be unjust for Plaintiff to profit by delay. The failure of the Defendant to make known the amount due, may disentitle it to claim interest at the legal rate, but any actual earnings of interest on such parts of sums set aside in separate deposits may be treated as an increment of the amount due which belongs to defendant rather than to plaintiff.

The decree for an injunction may be made conditional upon the payment by the Plaintiff of the sums due on the contract with any actual increment of interest thereon. For all amounts paid pending this suit by Plaintiff in excess of the contract rate the Plaintiff should have credit with interest at 6%.

A draft decree for an injunction and further relief in accordance with this opinion may be presented by the Plaintiff.

Letter of President to Public Utilities Commission. 67

May 7, 1924.

To the Public Utilities Commission,
State of Rhode Island.

Dear Sirs:

We are filing herewith R. I. P. U. C. No. 125, comprising a new schedule of rates, which we have called Electric Lighting Company Rate N, applicable by its terms to all public utilities which now purchase or may hereafter purchase electrical energy from us beyond a certain minimum amount.

We also enclose with this letter a certified copy of an opinion handed down by Judge Brown of the District Court of the United States for the District of Rhode Island, dated February 12, 1924, in the case of Attleboro Steam and Electric Company v. Narragansett Electric Lighting Company, Equity No. 173. 68

An agreement was entered into between the two companies on May 8, 1917, the Narragansett Company undertaking to supply the Attleboro Company with current for twenty years at a rate set forth in R. I. P. U. C. No. 68, on file with your Commission. On April 6, 1924, our Company filed a new schedule with your Commission, and your Commission, on April 27, 1921, made the order set forth in the Court's opinion, said schedule being filed with your Commission as R. I. P. U. C. No. 101. 69

The Court does not question the jurisdiction of your Commission to change the rate fixed by this agreement, but holds that the proceedings taken, which we had supposed were effective in accordance with Section 48 of the Public Utilities Act of Rhode

70 *Letter of President to Public Utilities Commission*

Island to change the contract rate designated in R. I. P. U. C. No. 68, to that set forth in R. I. P. U. C. No. 101, were not sufficient to effect that result.

The reason given is that rates fixed by contract may only be changed by the Commission, after notice, formal hearing, investigation and finding. There must be both a finding that the old rates are "unjust, unreasonable, insufficient or unjustly discriminatory, or to be preferential or otherwise in violation of any of the provisions of the act"; and that the new rates are "just and reasonable." In these proceedings our Company would, of course,

71 have the burden of proof.

We believe that the District Court is in error in its opinion and that R. I. P. U. C. No. 101 is a validly established rate. But until a new rate is established by your Commission in conformity with the opinion of the District Court, we are in effect enjoined from charging at any but the old contract rate. This rate we believe and expect to be able to prove to the satisfaction of your Commission to be unreasonable and unjustly discriminatory. We therefore deem it incumbent upon us to have put in force as soon as may be, a rate applicable in terms to all public utility customers purchasing more than a certain minimum, which shall be just and reasonable, and which shall be a validly established rate in accordance with the tests laid down by the District Court.

72

At the trial above referred to, counsel for the Attleboro Company made certain objections to the rate R. I. P. U. C. No. 101, apart from the objections as to the sufficiency of the proceedings taken

before your Commission. During the oral argument the Court seemed to think these objections might be well founded. The objections were: (a) that the schedule R. I. P. U. C. No. 101 is too vague and indefinite to constitute a valid rate; (b) that your Commission cannot validly put in effect a new rate applicable in terms to only a single contract customer, at least without that customer's consent; (c) that no term of a contract can be changed by your Commission except the rate itself and that the new schedule attempts to make other changes. We have endeavored to construct a new rate which shall be free from these objections. We have based the general rate on costs as closely as we could estimate them, making the rate bear the same relation to cost of service that the rate for each of our other classes of service bears to the cost of such service. We have also compared the specific cost of the energy furnished the Attleboro Company and find that this checks closely with the schedule.

74

For these reasons we are filing with your Commission, and hereby give your Commission notice of, the proposed change in rate embodied in R. I. P. U. C. No. 125, effective by its terms as to all service rendered after 12 o'clock midnight, June 14, 1924. We believe and expect to be able to prove to the satisfaction of your Commission, that the old rate, R. I. P. U. C. No. 68, for the contract as a whole, is unreasonable and unjustly discriminatory and affects adversely the welfare of the public, and that the new rate proposed is just and reasonable. We are of the opinion that the new rate will, even if no action is taken by your Commission, become effective when and as specified in the rate

75

76 *Letter of President to Public Utilities Commission*

77 schedule. But inasmuch as the District Court is of a different opinion, we respectfully request that your Commission, upon its own motion, hold a public hearing, make full investigation, and if your Commission finds that the rate R. I. P. U. C. No. 68 is unjust, unreasonable, insufficient or unjustly discriminatory, or to be preferential or otherwise in violation of the act, order this rate superseded by the new general rate for public utilities filed herewith, if your Commission finds that this rate is just and reasonable; or by such other rate as your Commission shall find to be just and reasonable; all in accordance with Sections 48, 19-21, and 26-29 of the Public Utilities Act, so far as the same may, in the light of the District Court's opinion, seem to your Commission applicable.

We are sending a copy of this letter and of the accompanying rate schedule to the Attleboro Steam & Electric Company for its information.

Respectfully yours,

NARRAGANSETT ELECTRIC LIGHTING
COMPANY,

[Sgd] E. A. BARROWS,
President.

Enclosures.

78

Received May 7, 1924.

Public Utilities Commission,
State of Rhode Island.

Notice of Investigation.

79

**PUBLIC UTILITIES COMMISSION OF
RHODE ISLAND.**

PUBLIC UTILITIES COMMISSION
on its own motion

vs.

NARRAGANSETT ELECTRIC LIGHTING
COMPANY.

Notice of
Investigation

WHEREAS, The Narragansett Electric Lighting Company has on the seventh day of May, A. D. 1924, filed with the Public Utilities Commission a certain rate schedule, R. I. P. U. C. #125, cancelling R. I. P. U. C. #68 and #101, to be effective on all electricity delivered after 12:00 o'clock midnight June 14, 1924 (copies of which schedule are hereto annexed), which said schedule affects, modifies and changes the rates now charged by said Company to the Attleboro Steam and Electric Company.

80

NOW THEREFORE the Public Utilities Commission on its own motion and upon the notice hereinafter provided for, hereby orders an investigation and public hearing upon the question of whether the existing rates, tolls and charges of the Narragansett Electric Lighting Company now charged to the Attleboro Steam and Electric Company or those proposed to be charged to said Company and other electric lighting companies under said rate schedule R. I. P. U. C. #125, cancelling R. I. P. U. C. #68 and #101, are unjust, unreasonable, insufficient or unjustly discriminatory, or preferential or

81

Notice of Investigation

otherwise in violation of any of the provisions of the Public Utilities Act of the State of Rhode Island, and otherwise upon the question as to the propriety of the proposed change or changes embodied in said Schedule #125, and it is further

(S29) ORDERED: That notice of such investigation be given forthwith by mail to the Narragansett Electric Lighting Company and to the Attleboro Steam and Electric Company that public hearing shall be held by the Public Utilities Commission at Room 121, State House, Providence, Rhode Island, on Monday, May 26th, A. D. 1924, at 10 o'clock A. M. (Eastern Daylight Saving Time), and that further notice of such public hearing be given by publication of a copy of this order on May 16th and 23rd, 1924 in the Providence Journal.

NOW THEREFORE, Notice is hereby given you that after the expiration of ten days from the date of the service of this notice upon you, the undersigned will proceed to investigate the matters and things set forth in said complaint.

Dated this seventh day of May, A. D. 1924.

**PUBLIC UTILITIES COMMISSION OF
RHODE ISLAND.**

84

By WILLIAM C. BLISS,
SAMUEL E. HUDSON,
ROBERT F. RODMAN,
Commissioners.

[Seal of Public Utilities Commission.]

TO NARRAGANSETT ELECTRIC LIGHTING CO.

A true copy.

Attest:

(Signed) GEORGE A. CARMICHAEL,
Secretary.

Notice of Investigation

85

R. I. P. U. C. No. 125

Cancelling R. I. P. U. C. Nos. 68 & 101

NARRAGANSETT ELECTRIC LIGHTING COMPANY

Electric Lighting Co. Rate N

CHARACTER OF SERVICE

Electricity will be supplied under this rate to Electric Lighting Companies for use by them or for sale to their customers. Such electricity will be delivered in the form of 3 phase, 60 cycle, alternating current at the voltage at which it is transmitted to the point of delivery, which point of delivery shall be such location as may be mutually agreed upon, provided, however, that in all cases where the customer is located without the State of Rhode Island, such location shall be at the Rhode Island State Line. Meters for registering the current delivered and for the determination of the maximum taking shall be located at the point of delivery, unless some other location may be mutually agreed to, in which case the necessary adjustment shall be made in the meter readings to ascertain the current delivered and the maximum taking as of the point of delivery.

86

RATE

87

Demand in kilowatts, 3,000 or over.

Annual investment charge per kilowatt of demand, \$19.00.

Electricity charge per kilowatt hour, 8 mills.

*Notice of Investigation***TERM OF CONTRACT**

One year or over.

BILLS

Bills shall be rendered monthly for one-twelfth part of the annual investment charge and for electricity delivered during the previous month and shall be due and payable within fifteen days of rendition.

STANDARD CONTRACT RIDERS AND TERMS AND CONDITIONS

The Company's Standard Contract Riders and Terms and Conditions on file from time to time with the Public Utilities Commission, where not inconsistent herewith or otherwise mutually agreed, are made a part hereof.

Effective on all electricity delivered after 12 o'clock midnight June 14, 1924.

Notice of Investigation

91

R. I. P. U. C. No. 68

NARRAGANSETT ELECTRIC LIGHTING COMPANY

Special Rate to the Attleboro Steam and Electric Company

CHARACTER OF SERVICE

22,000 volt, 3 phase, 60 cycle alternating current delivered at the state line between the town of East Providence, Rhode Island, and the Town of Seekonk, Massachusetts.

CONDITIONS

92

Transmission lines outside the State of Rhode Island to be furnished by foreign corporations for an annual payment of fifteen per cent. (15%) of their cost.

RATE

8.57 mills per kilowatt hour as registered by the meters installed in the substation of the Attleboro Steam and Electric Company.

The Narragansett Company to pay \$1750.00 per year for operation of the receiving substation.

Above price to be subject to increase or decrease for fluctuations in the cost of coal above or below \$3.50 per long ton alongside the Narragansett Electric Lighting Company's station; also to increase or decrease to cover increase or decrease in regular or special taxes or new taxes.

93

Notice of Investigation

TERM OF CONTRACT

Twenty (20) years and thereafter unless discontinued by either party.

Effective

Issued

(Stamped)

Received May 16, 1917.

Public Utilities Commission,

JOHN W. ROWE,

Secretary.

Notice of Investigation

97

R. I. P. U. C. No. 101.

Cancelling R. I. P. U. C. No. 68.

NARRAGANSETT ELECTRIC LIGHTING COMPANY

*Special rate to Attleboro Steam and Electric
Company*

CHARACTER OF SERVICE

Electricity to be delivered to the Attleboro Company at the East Providence Sub-Station of the Narragansett Company or at such other point or points as may be mutually agreed upon by the parties at 22,000 or other agreed voltage. Said electricity to be in the form of three phase, sixty cycles, alternating current.

98

CONDITIONS

The Attleboro Company to receive electricity at said East Providence Sub-Station and to bear all expense of transmitting the electricity thus received.

RATE

(a) A service charge of such amount as will equal the cost to the Narragansett Company of taxes, insurance, depreciation, obsolescence and any other fixed charges and net the Narragansett Company an eight per cent. dividend upon that portion of the cost of the plant which can properly be allocated to the generation of electricity for and the delivery of such electricity to the Attleboro Company.

99

Notice of Investigation

(b) A charge per kilowatt hour for all electricity delivered which shall be equal to the cost per kilowatt hour to the Narragansett Company of generating and delivering such electricity to the Attleboro Company at said point of delivery plus a fixed addition thereto of 1 mill per kilowatt hour.

(c) A charge equal to any and all taxes paid by the Narragansett Company on account of or having relation to the electricity generated for or sold or delivered to the Attleboro Company or any payments receivable or received by the Narragansett Company therefor, including the payment received as a service charge or otherwise incidental to or arising out of the service rendered or to be rendered by the Narragansett Company to the Attleboro Company.

DISCOUNTS

The above rate is net.

TERM OF CONTRACT

April 1, 1921 to April 1, 1938.

Effective on all electricity billed on and after April 1, 1921.

(Stamped)

Received April 6, 1921.

Public Utilities Commission,
State of Rhode Island,
G. A. CARMICHAEL,
Secy.

Copy of Advertisement in Regard to Public Hearing. 103

**PUBLIC UTILITIES COMMISSION OF
RHODE ISLAND**

PUBLIC HEARING

Notice is hereby given that a public hearing will be held by the Public Utilities Commission, Monday, May 26, A. D. 1924 at 10 o'clock A. M. (Eastern Standard Daylight Saving Time) in Room 121, State House, upon the question of whether the existing rates, tolls and charges of the Narragansett Electric Lighting Company now charged to the Attleboro Steam and Electric Company or those proposed to be charged to said Company and other electric lighting companies under Rate Schedule R. I. P. U. C. #125, cancelling R. I. P. U. C. #68 and #101, are unjust, unreasonable, insufficient or unjustly discriminatory, or preferential or otherwise in violation of any of the provisions of the Public Utilities Act of the State of Rhode Island and otherwise upon the question as to the propriety of the proposed change or changes embodied in said Schedule #125. 104

**PUBLIC UTILITIES COMMISSION,
STATE OF RHODE ISLAND,**

By **GEORGE A. CARMICHAEL,**
Secretary. 105

Providence Journal, Friday, May 16th and Friday,
May 23rd, A. D. 1924.

(Kindly send affidavit of publication as soon as printed.)

106 *Letter from R. G. Dodge to Narragansett Electric
Lighting Company.*

735 Exchange Building,
Boston 9th May 1924.

Public Utilities Commission
State House
Providence, R. I.

(Attention Mr. Carmichael)

Dear Sirs:

(Re Narragansett Electric Lighting Company)

107

I acknowledge receipt of your letter of May 8th directed to Attleboro Steam & Electric Company and enclosing Commission Order No. 829 and other papers. I represent the Attleboro Company in the matter and had been advised of the filing of a petition by the Narragansett Electric Lighting Company. When your letter of May 8th reached me I was about to write and ask that the hearing on the matter be not assigned for the last week in May as I have a long standing engagement to try a case in another state during that week. I have just telephoned Mr. Graustein, who represents the Narragansett Company and find that it would be entirely agreeable to him if the hearing before your Board could be adjourned to Monday, June 2. I shall appreciate it very much if you would let me know whether this can be arranged.

108

As you know, it has been our contention that if the contract between the two companies involves interstate commerce, the Rhode Island Commission has no jurisdiction over it. This contention, of

Letter from R. G. Dodge to Narragansett Electric Light Company 109

course, must be passed upon by the courts and we have not yet decided whether we shall make an application to the Supreme Court of Rhode Island before the hearing or whether we shall raise the question in the first instance before the Commission.

Very truly yours,

(sgd.) R. G. DODGE.

Received May 10, 1924.

Public Utilities Commission,
State of Rhode Island.

110

111

112 *Letter from Narragansett Electric Light Company
to Public Utilities Commission*

May 21, 1924.

Public Utilities Commission,
State House,
Providence, R. I.

Dear Sirs:

On May 7th we filed with you R. I. P. U. C. No. 125 comprising a new schedule of rates applicable to public utilities which may now purchase or may hereafter purchase electric energy from us. We are now submitting, herewith, the data on which this schedule is based.

The charges under this schedule consist of an annual investment charge for each kilowatt of demand and an electricity charge for each kilowatt hour of electricity delivered. The investment charge is designed to cover depreciation, taxes and insurance on that part of our investment properly chargeable to the production and delivery of electricity to the customers coming within said schedule in the manner and form therein specified and to produce thereon a net return of 8% per annum. The electricity charge is designed to cover the cost of producing and delivering electricity to the point of delivery specified in said schedule due allowance being made for contingencies.

In preparing this data great weight has been given to the specific property used in supplying electricity to the Attleboro Steam & Electric Co. as it is contemplated that this Company will be the first customer to be supplied under this rate. Al-

Letter from Narragansett Electric Light Company 115
to Public Utilities Commission

though this schedule may be justified otherwise than on the data submitted herewith, we feel that such data is in itself sufficient.

We are this day mailing to the Attleboro Steam and Electric Company, 60 Congress Street, Boston, Mass., a copy of this letter together with the data mentioned herein. We are also inviting them to examine our books and records for the purpose of expediting the course of your investigation as much as possible, all as set forth in our letter to them of even date, a copy of which we are enclosing herewith.

116

Very truly yours,

NARRAGANSETT ELECTRIC LIGHTING CO.

E. A. BARROWS,

President.

JEG/K

Encs.

J.E.G.

Received May 22, 1924.

Public Utilities Commission,
 State of Rhode Island.

117

118

Tariff No. 125—Rate N

R. I. P. U. C. No. 125

Cancelling R. I. P. U. C. Nos. 68 & 101

NARRAGANSETT ELECTRIC LIGHTING COMPANY
ELECTRIC LIGHTING CO. RATE N

CHARACTER OF SERVICE

119

Electricity will be supplied under this rate to Electric Lighting Companies for use by them or for sale to their customers. Such electricity will be delivered in the form of 3 phase, 60 cycle, alternating current at the voltage at which it is transmitted to the point of delivery, which point of delivery shall be such location as may be mutually agreed upon provided, however, that in all cases where the customer is located without the State of Rhode Island, such location shall be at the Rhode Island State Line. Meters for registering the current delivered and for the determination of the maximum taking shall be located at the point of delivery, unless some other location may be mutually agreed to, in which case the necessary adjustment shall be made in the meter readings to ascertain the current delivered and the maximum taking as of the point of delivery.

120

RATE

Demand in Kilowatts	Annual Investment Charge Per Kilowatt of Demand	Electricity Charge Per Kilowatt Hour
3,000 or over	\$19.00	8 mills

TERM OF CONTRACT

One year or over.

BILLS

Bills shall be rendered monthly for one-twelfth part of the annual investment charge and for electricity delivered during the previous month and shall be due and payable within fifteen days of rendition.

STANDARD CONTRACT RIDERS AND TERMS AND CONDITIONS

The Company's Standard Contract Riders and Terms and Conditions on file from time to time with the Public Utilities Commission, where not inconsistent herewith or otherwise mutually agreed, are made a part hereof. 122

Effective on all electricity
delivered after 12 o'clock
midnight June 14, 1924.

PUBLIC UTILITIES COMMISSION OF RHODE ISLAND

The Commission having received notice of a change proposed to be made in Schedule R. I. P. U. C. No. 101 (and in Schedule R. I. P. U. C. No. 68 if and in so far as the said schedule is now in effect), the Commission on its own motion and upon the notice hereinafter provided for, hereby orders a public hearing and investigation as to the propriety of such proposed change. 123

Such public hearing and investigation shall be held at _____ on _____, May _____, 1924, at _____ o'clock in the forenoon, and notice thereof shall be given this day by mail to Narragan-

124

Tariff No. 125—Rate N

sett Electric Lighting Company and to Attleboro
Steam & Electric Company, and by publication on
, May , 1924, and on

, May , 1924, in the Providence Journal.
May , 1924.

Received
May 7, 1924
Public Utilities Commission
State of Rhode Island

125

126

PUBLIC UTILITIES COMMISSION OF RHODE ISLAND.

PUBLIC UTILITIES COMMISSION ON ITS OWN
MOTION

v.

NARRAGANSETT ELECTRIC LIGHTING COMPANY.

#114.

In the above entitled cause it appearing to the Public Utilities Commission that it is desirable that all parties at interest may have further opportunity to obtain and present data which it is desired to have as possible evidence and in order that the Commission may have more time in which to hear arguments and further testimony, if introduced, upon the question of whether the rates, tolls and charges of the Narragansett Electric Lighting Company in its tariff R. I. P. U. C. #125, cancelling R. I. P. U. C. #68 and #101, are unjust, unreasonable, insufficient or unjustly discriminatory or preferential or otherwise in violation of any of the provisions of the Public Utilities Act of the State of Rhode Island and otherwise upon the question as to the propriety of the proposed change or changes embodied in said schedule #125.

128

129

NOW THEREFORE, on the second day of June, A. D. 1924, it is hereby

(835½) ORDERED: That tariff R. I. P. U. C. #125, cancelling R. I. P. U. C. #68 and #101 filed by

130

Order No. 835½

Narragansett Electric Lighting Company, to become effective on all electricity delivered after 12 o'clock midnight June 14, A. D. 1924, is hereby suspended until August 14, A. D. 1924.

Dated this second day of June, A. D. 1924.

PUBLIC UTILITIES COMMISSION OF RHODE ISLAND,

By

WILLIAM C. BLISS,
SAMUEL E. HUDSON,
ROBERT F. RODMAN,
Commissioners.

131

A true copy.

Attest:

GEORGE A. CARMICHAEL,

Secretary.

[SEAL]

132

Letter from Jesse E. Gray to Public Utilities Commission. 133

NARRAGANSETT ELECTRIC LIGHTING COMPANY

Providence, R. I.

July 10, 1924

**Public Utilities Commission
Providence, R. I.**

Dear Sirs:

In re-checking we find that on page 5 of our Exhibit No. 10 although the capital costs are for twenty years, the period specified in our contract with the Attleboro Company, nevertheless, the exhibit submitted does not cover a period exactly coinciding with the period of the contract inasmuch as we have figured a full year's capital costs in 1918 and nothing in 1938, whereas to coincide exactly with the period of the contract there would be nine months in 1918 and three months in 1938. Had we taken the actual contract period the results would have been more favorable to us than those set forth in our exhibit, as the loss in the first three months of 1938 would have been more than the loss in the first three months of 1918. 134

We desire to call this to your attention, however, as in the above mentioned exhibit the data for 1918 is marked "(9 months)". 135

Had the loss in 1918 been figured for nine months instead of twelve months, capital costs would have been reduced to \$27,905.75 and the total cost of supplying service to \$65,637.15. This would have made the net loss for nine months \$29,479.12. The

136

*Letter from J. E. Gray to Public Utilities
Commission*

reduction in the loss for 1918 would have been more than offset by the loss for the first three months of 1938, which as stated above would have made the total loss for twenty years in excess of that shown in our exhibit above mentioned.

We are sending a copy of this letter to Storey, Thorndike, Palmer and Dodge, counsel for the Attelboro Company.

Very truly yours,

JEG/K

(sgd.) JESSE E. GRAY,
Assistant Secretary.

137

(Stamped)
Received July 10, 1924
Public Utilities Commission
State of Rhode Island.

138

Testimony

139

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,**PUBLIC UTILITIES COMMISSION.**

May 26, 1924.

PUBLIC UTILITIES COMMISSION
on its own motion

vs.

**NARRAGANSETT ELECTRIC LIGHTING
COMPANY.**

140

Present:**Mr. Commissioner BLISS, Chairman.****Mr. Commissioner HUDSON.****Mr. Commissioner RODMAN.****GEORGE A. CARMICHAEL, Secretary.**

Messrs. Barrows, Lisle and Gray appear in behalf of the Narragansett Electric Lighting Company.

Mr. Chairman Bliss: This is an investigation entitled the Public Utilities Commission on its own motion *vs.* Narragansett Electric Lighting Company, and the subject of the investigation is the rates contained in the proposed schedule of rates which has been filed with the Commission by the Narragansett Electric Lighting Company providing rates for the Attleboro Steam & Electric Com-

141

pany and modifying certain rates which were established by the terms of a contract which is approved by the Commission and later attempted to be cancelled by the subsequent rate schedule. The subject of the investigation is the reasonableness of the rates contained in the proposed schedule.

The Commission issued notice to the parties involved in this investigation and also called a public hearing, and made due advertisement of the same. Through an inadvertence on the part of the newspaper, they have published the time for the hearing as ten o'clock Eastern Standard time although the typewritten copy sent is by the Eastern Standard Daylight Saving time. The Commission will be in session until ten o'clock Eastern Standard time so that if any other party desires to enter an appearance it may do so at that time.

The Commission is in receipt of a letter signed by Robert G. Dodge of the law firm of Thorndike, Palmer & Dodge, Boston, Mass., to enter his appearance for the Attleboro Steam & Electric Company. The letter is under date of May 9, 1924, and in the body of the letter it is said, as follows:

"As you know it has been our contention as the contract between the two companies involves interstate (matters) the Rhode Island Commission has no jurisdiction over it. This contention, of course, must be passed upon by the courts and we have not yet decided whether we shall make application to the Supreme Court of Rhode Island before the hearing or whether we shall raise the question, in the first instance, before the Commission."

It is therefore indicated that the Attleboro Steam & Electric Company intends to enter special appearance for the purpose of urging that contention and does not by that appearance waive its right to raise the point.

Notice was served upon the companies by registered mail in accordance with the statute and the return receipts are on file with the papers.

Is it the understanding of the Commission that the Company desires a continuance for one week for hearing?—Appearances for the Narragansett Electric Lighting Company are Mr. Barrows, President; Mr. Lisle, General Manager; and Mr. Gray, Assistant Secretary.—Then the matter will be continued until June 2, 1924, 10 o'clock a. m., Eastern Daylight Saving time.

Providence, R. I., June 2, 1924.

Met pursuant to adjournment.

Present :

Mr. Commissioner BLISS, Chairman.

Mr. Commissioner HUDSON.

Mr. Commissioner RODMAN.

Appearances :

149 For the Narragansett Electric Lighting Co., Arch-
ibald R. Graustein, Esq., Arthur M. Allen, Esq.,
Frank D. Comerford, Esq.

For the Attleboro Steam & Electric Co., Robert
G. Dodge, Esq., Harold S. Davis, Esq.

150 Mr. Chairman Bliss: The hearing will be in
order. I apologize to you, gentlemen, for the inade-
quate facilities we have for the hearing. We have
provided a large room for hearings but it is in use
today for the examination of pharmacists, and we
are compelled to use this room for the hearing.
I trust this examination will be completed and as
soon as it is we will be able to get better facil-
ities in the larger room.

When this matter came up a week ago today the
appearances were entered and the matter was con-
tinued until this morning. Are there any further
appearances? Perhaps we had better check up the
appearances.

For the Narragansett Electric Lighting Company, Archibald G. Graustein, A. M. Allen, Frank D. Comerford.

For the Attleboro—

Mr. Dodge: Robert G. Dodge and Harold S. Davis represent the Attleboro Steam & Electric Company.

Mr. Chairman Bliss: Under the provisions of our statute where a rate schedule involves an increase in rates the burden of justifying the increase is upon the utility proposing it, consequently, the burden of justifying this increase which is contained in the proposed schedule will be upon the Narragansett Electric Lighting Company, and they should have the opportunity to open and present their testimony and they, being the moving party, will have the closing argument. 152

Mr. Dodge: Before the introduction of testimony begins, Mr. Chairman and Gentlemen, I must put upon the record my objection to the jurisdiction of the Commission. You are aware, of course, that the Attleboro Company against which this proposed rate is primarily aimed has a long term contract with the Narragansett Company which puts the case upon an entirely different plane from the ordinary case. It is a contract made in 1917 which had the approval of your board and, therefore, was given even more solemnity than the ordinary contract might have. Now, we must record our objection to the jurisdiction of the Commission over this contract, in the first place, as a matter of the construction of your statute. The Rhode Island public utility law, I think, did not contemplate 153

that contracts, particularly contracts with non-residents, should be subject to the jurisdiction of this board. I say that for three reasons; in the first place, your Board is given jurisdiction over certain classes of public utilities defined in section 2 of the act, among others, railroads having lines in this State, street railways having lines in this State, and electric light or power companies having plants in this State. Now, it is obvious that as to railroads and street railways your Board has no jurisdiction over interstate rates. We contend that the legislature must be assumed to have had the same limitation in mind in giving you jurisdiction over electric companies and, therefore, your jurisdiction does not extend to interstate contracts, to interstate rates; secondly, it seems to us upon a fair construction of the statute that you were not intended to have jurisdiction over non-residents for the reason that the statute fails to give non-residents any standing to come before the Commission themselves with complaints, and if they have not a right to come here with complaints it does not seem that the legislature could have intended that your Commission could deal with the rates payable by them upon application of anybody if they are not given the same rates as residents of the State are. The statute, we submit, would be unconstitutional although with questions of constitutionality your Board is not at present interested; but as a matter of statutory construction under section 18, the only concerns or individuals who can come in here and complain are either a public utility subject to your jurisdiction, which means a Rhode Island utility, or twenty-five

qualified electors meaning, of course, inhabitants of Rhode Island, or a city or town council, or a corporation. Now, the word "corporation" is broad enough to include foreign corporations but we submit it could not have been so intended in view of the context; in other words, it can not be that a foreign corporation has a right to come here where foreign individuals or a foreign partnership would not have the right. Section 18 manifestly does not include residents in a neighboring State and give them any right to come here and therefore it can not be assumed that the other side has a right which we do not have, or that your Board has jurisdiction of a complaint by them. Finally, there is another argument based upon the language of the statute which seems to us to show there is no jurisdiction, that is the provision with reference to appeal. The appeal to the Supreme Court of Rhode Island is limited to public utilities or complainants. We are neither. We can not be a complainant under section 18. We are not here as complainants now; we are satisfied with the contract; we are not complaining of anything. We have, apparently, under your statute no right of appeal to the Supreme Court of the State and, if so, to save the constitutionality of the statute it must be construed as not being applicable to us. It would seem that the legislature did not have in mind contracts—giving your Board jurisdiction to disturb contracts for, if they had had that in mind, they would have provided for an appeal from the party who has the contract. Now, they have not done that because, as I say, they have given no appeal only to the public utilities or to a

complainant. On those three grounds we submit that the Board has no jurisdiction over this proposed rate or this matter in so far as it concerns the company primarily aimed at, namely, the Attleboro Steam & Electric Company. Of course, we contend, and I ought to state here to make it plain as a matter of record, that, if the statute is construed contrary to what we have suggested in any one of these three respects, we should contend that it was unconstitutional as regards the Attleboro Company which has this interstate contract which is now complained of and apparently has no right to appeal to the courts of the State. We also contend that the contract, having had the approval of the Public Utilities Commission of this State, being in that respect different from the contracts dealt with in most cases, becomes in effect a contract of the State and can not be abrogated.

161 Mr. Chairman Bliss: It has been the practice of the Commission in dealing with these matters to take the testimony of the parties. Of course, there is a stenographic record that goes up with the appeal so that the whole matter on appeal is open before the Supreme Court, and it is simply necessary for you to note your objections without the necessity of the Commission overruling your points. We are prepared to deal with the question and take the testimony as a matter of record so that you can enforce your rights before the other courts, of course.

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Mr. Dodge: I think our rights are sufficiently saved by the statement I made.

Mr. Chairman Bliss: The Commission will assume jurisdiction. We deem it our duty to assume

jurisdiction in the matter for the purpose of hearing the matter. We feel that our jurisdiction extends to all of the practices of the utility there which is within our jurisdiction. If we assumed any other position, why, these utilities might furnish electricity outside the State, completely outside our jurisdiction and out of any one's else jurisdiction.

Mr. Graustein: The Attleboro Company was served by the Narragansett Company for several years beginning under the contract for some years past. The service has been presumed by the Narragansett Company to be under the rate filed here subsequently to the making of the contract designated as No. 101. In litigation brought by the Attleboro Company to test the effectiveness of that rate, the local Federal District Court held that the proceedings leading up to the filing of that rate and its being put into effect were not adequate to make that increased rate effective. The Narragansett Company has filed, subsequently to that decision, a new rate, No. 125, and this Commission has independently ordered an investigation on the subject of the rates charged by the Narragansett Company to the Attleboro Company. It is apparent, I think, that the Commission is at this hearing exercising its authority to deal with the contract and the rate. The Narragansett Company feel that it is clear that the Commission has jurisdiction notwithstanding the points which Mr. Dodge has raised in his former statement, and it may be said too that while the decision of the Court in the Federal case recognized that Mr. Dodge has raised these questions, at the same time it gave no recognition of their

being any merit in them. I doubt if the Commission desires me to make any formal argument in regard to the various questions which Mr. Dodge has raised. The fact of the constitutionality of the act, of the public service act, of course, is not a matter that this Commission would feel is open after the act has been in effect ten years—twelve years. The power to change rates established by contract has been established for a great many years; first, under the interstate commerce law, and is perfectly obvious that if rates fixed by contract, especially if fixed by contract after the law goes into effect that they can not be changed, 167 the utility law is of very slim value and the power can be weakened very materially. Finally, the other point is, the interstate commerce—as is known, the United States Supreme Court has stated the power of Commissions to deal with rates under circumstances analogous to those existing here, so that those legal questions, I assume it will not be necessary to discuss them here at further length. That brings me back to the question of what the Commission could do in this hearing.

The Commission is investigating rates. Practically there are just two rates to be investigated—one service and two rates. The first rate is the contract rate; and the second is the new rate 125; 168 I don't think the intermediate rate 101 is of importance enough at this stage to make it desirable to spend time on that rate. I take it that the question before the Commission is, first, whether the old rate, the contract rate which we will call 68—that was the number under which it was filed—whether that is a fair rate, and if it is not whether we can substitute 125 as a fair rate; and it may be—of

course, it is quite open to the Commission to conclude that neither rate is fair. The contract was to put into effect a rate between the two—I didn't mean to exclude that possibility in my statement, but as we have tried in No. 125 to make a rate which is almost automatically fair I have assumed that if the Commission is convinced of the unfairness and the illegality and unlawfulness of 68 it will order 125 into effect. We will then analyze 68 and 125.

Now, 68 was practically a flat rate, and we will show with exhibits already filed with the Commission, show that that rate provides enough income to pay operating costs and pay depreciation and taxes and insurance pretty nearly, not quite; it pays nothing at all on the investment.

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Now, it may be that Mr. Dodge will question the precise accuracy of that conclusion. I don't know any basis on which it could be questioned but it seems to me that a rate which is so far below a fair rate, giving no return whatever on the investment, little or no return at any rate, is obviously unfair and unjust, discriminatory. Our figures will show—going to 125 for a moment—that rate is based upon the cost of service, including in the cost of service a return of 8 per cent. on the investment. That return is not 8 per cent. on the investment value; it is 8 per cent. on the book value; so that the rate that has been recognized 8 per cent. by the Supreme Court—the Supreme Court of the United States I am referring to—and the rate may be based on replacement value—so that in setting up a rate of 8 per cent on the cost the Narragansett Company seems to us to be pretty well within its rights. There are a good many detailed questions as to just what cost

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is and I will come to those in detail; I won't go over them at this moment. We will show the Commission just how we figure the costs in that rate. We might have based the rate specifically on cost but Mr. Dodge has a feeling that might be too indefinite, so we wanted to meet all possible objection and get a rate that would enable us to present clearly the issue. In our point of view the situation is very, very simple. We do not want to charge the Attleboro Company anything more than it should pay but we are a public utility here and our chief duty is to serve the public and that public includes Attleboro in this case. We owe that duty simply to serve them with fair rates; but we also owe the general public here the duty of serving them at fair rates, and it is axiomatic in public utility practice, in order to enable a company to render service it has got to have a return on its investment. It can not meet the constant demand on it unless it can raise money; and it can not raise money unless it has a reserve on its investment; so it has got to earn a return upon its investment. If it does not earn it from Mr. Dodge's client it has to earn it from some one else. Mr. Dodge suggests that is a local question which I won't discuss further. I want to mention it merely because one of the issues to be decided by this Commission is whether, in the words of the statute, the present rate, that is 68, is unreasonable, insufficient and unjustly discriminatory; and it seems to me if any rate ever was, this rate is, because that is just what it does mean. It means the public down here has got to pay the cost for providing facilities for service to Attleboro. There was one consideration which was mentioned in the Federal

Court and that is, that this is a twenty year long term contract and that benefits deriving from that fact might be expected in the long run to outweigh any temporary loss but I don't think Mr. Dodge will contend that loss continued twenty years will make that any easier to bear, and it looks to me as if this rate being continued for such a term it would make it more unreasonable rather than less.

Mr. Chairman Bliss: You do not question the fact that your company made a mistake in the contract?

Mr. Graustein: That is why we are here; that is just exactly the situation, and we made a mistake which was a very grave mistake. Perhaps it can be excused by the fact of the late war and post-war conditions which resulted in economic upsets, which a great many very wise people failed to provide against and we are among those people; but we say, it is not only our duty but it is the duty of the Commission to remedy that mistake. The public utility laws are devised to protect the general public against discrimination and the result of discrimination, direct and indirect, and whether the discrimination arose in good faith or bad faith the effects are equally injurious to the public. It does not make any real difference. We might have made that contract in 1917 perhaps knowing we were giving them advantage but we would not have done any more harm than by making it in the best of faith; so the question is not whether the contract is a contract or not, the question is whether the rate is fair. The utility law provides clearly, it seems to me, that no contract can stand if the rates fixed in it are unjust and unfair. Now, we have filed with the Commission two statements, and one shows the results based on

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125, and the other shows the result under No. 68.

Mr. Chairman Bliss: Of course, those matters should be presented through witnesses, and marked as exhibits as a part of the record.

179 Mr. Graustein: I will call witnesses. Now, to present this analysis,—there is some further statement which I have omitted to make in outlining the general situation. I might perhaps say this, before calling a witness, that we want to make perfectly clear that this is an issue which affects not only the Narragansett Company but affects the public service. That is not mere theory; that is fact—something like \$50,000 a year at stake at the present rate of consumption by the Attleboro Company. There is no reason to doubt that rate of consumption will grow, especially it may be helped to grow if they continue to get electricity at less than it has cost; at any rate, even apart from any unnatural advantage through a low rate, Attleboro is going to grow, business is going to grow and this forty or fifty thousand a year will increase, and that is a big enough sum to be reflected in some rate of reduction in Rhode Island if this situation is adjusted; I mean the Narragansett Company will be in a position to apply that amount in reduction of its rates. Just what rate should be reduced is, of course, a question of study of the whole rate structure and to be decided at the time of the application of that sum to any one or more of the rates. The Narragansett Company would show a quite noticeable decrease in the rate so that we will bring in evidence that we are dealing with the matter and it has not only a theoretical but an actual and immediate effect on the public in Rhode Island.

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Jesse E. Gray—Direct

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JESSE E. GRAY

JESSE E. GRAY is called in behalf of the Narragansett Electric Lighting Company and, having been duly sworn, testifies as follows:

Direct Examination by Mr. Graustein:

Q1. Your name is Jesse E. Gray? A. Yes, sir.

Q2. You are connected with the Narragansett Electric Lighting Company? A. Yes, sir.

Q3. What is your position with the company? A. Assistant secretary.

Q4. What is your function, what work do you do? A. I work on the rate schedules and deal with contracts and contractual relations with our customers, and miscellaneous work of that nature. 182

Q5. Are you the officer of the company who has chief conduct of the preparation of contracts and rate schedules? A. Yes, sir.

Q6. How long have you been doing that work? A. Approximately twelve years.

Q7. Did you cause to be prepared a statement of rate No. 125 as filed with the Rhode Island Public Utilities Commission? A. Yes, sir.

Q8. Is that entitled Basis for R. I. P. U. C. No. 125? A. It is.

Q9. It has been filed with the Commission? A. It has. 183

Q10. Have you a copy of that?

Mr. Chairman Bliss: That may be marked as "Exhibit No. 1" in this proceeding.

Q11. Mr. Graustein: Did you also prepare or cause to be prepared an analysis of Schedule No. 68? A. 68?

Q12. 68. A. Yes, sir.

Q13. That is entitled "Result of selling electricity under schedule—under 68"? A. Yes, sir.

Mr. Graustein: May that be marked as Exhibit No. 2?

Mr. Chairman Bliss: It may be so marked.

Q14. Mr. Graustein: Now, Mr. Gray, I will go back to Exhibit No. 1 which is the basis for rate No. 125; the first two sheets of that consists of an explanation of the third sheet? A. Yes, sir.

Q15. The third sheet is entitled "Generating plant data;" is that correct? A. Yes, sir.

185 Q16. Those three sheets together indicate the unit cost and the actual cost per kilowatt of primary capacity; is that true? A. Primary capacity measured at the East Providence substation—measured at all substations.

Q17. Electricity delivered at the substation? A. Yes, sir.

Q18. Are these figures based upon the book value of the generating plant—are these book value figures correct? A. Yes, sir.

Q19. Do they represent the actual cost or less? A. They are based upon an appraisal made by the American Appraisal Company in, I believe, 1914, and since that date the actual cost of any additions.

186 Q20. How do they compare with the present replacement value? A. In most cases they would be considerably less.

Q21. In the aggregate how would they compare? A. Less.

Q22. The reserve for depreciation is deducted from that book value? A. Yes, sir.

Q23. And the return which this schedule indicates is calculated only from the balance? A. Yes, sir.

Q24. Are the statements contained in this schedule and the two supporting sheets correct? A. They are.

Q25. Turning to the next three sheets, the third of these three sheets is entitled "Transformation and transmission data"? A. Yes, sir.

Q26. The two sheets preceding that are explanatory of that third sheet? A. They are.

Q27. The third sheet gives the cost per kilowatt of capital cost and the annual cost per kilowatt of the transformation and transmission facilities referred to? A. They do. 188

Q28. These costs again are based on actual cost? A. They are.

Q29. Or appraisals? A. Actual cost.

Q30. They are based on actual cost less depreciation? A. Less depreciation.

Q31. Are these actual costs less than replacement cost? A. They are.

Q32. Referring both to this sheet and to the sheet in regard to the generating plant, are the costs after deduction of depreciation as given on these sheets less than, in the aggregate, the replacement costs of the same properties at the present day, less depreciation? A. They are. 189

Q33. Are the statements contained in the transformation and transmission data, and the two preceding sheets explaining that data—are those statements correct? A. They are.

Q34. The next sheet is a summary sheet showing the total annual charge per kilowatt for service

rendered the Attleboro Company under No. 125 rate; is that sheet correctly computed? A. It is.

Q35. Is the conclusion indicated in that sheet, in your opinion, sound and reasonable? A. Yes, sir.

Q36. Based upon correct principles? A. Yes, sir.

Q37. And the application of the principles to the facts is correct? A. Yes, sir.

Q38. Coming to the next sheet, the third sheet following is entitled "Generating and delivery costs;" am I right? A. Yes, sir.

191 Q39. The two sheets preceding that and the two sheets following it are explanatory of it? A. The two sheets preceding but not the two sheets following.

Q40. The two sheets preceding it are explanatory of it? A. Yes, sir.

Q41. The two sheets following it contain matter bearing upon the charge—those five sheets all stand together? A. Yes.

Q42. Now, that 8 mill kilowatt hour charge is based upon the actual generating costs inclusive, as shown in detail in these sheets exclusive of one mill for what might be called overhead and contingencies? A. Yes, sir.

Q43. Is that a correct statement? A. That is a correct statement.

192 Q44. The first two sheets bear upon the general calculation of costs, and the last two sheets bear upon that one mill charge? A. Yes, sir.

Q45. Are the statements contained in the five sheets correct? A. They are.

Q46. The statements contained in the first two sheets—I will not ask you to comment upon the last two sheets—indicate the basis for the one mill

charge; if I understand correctly that one mill covered first the income tax, and second overhead. Take out the income tax which presents a large item; second, overhead; and third, contingencies—am I correct? A. No; the income tax is not taken care of in the one mill.

Q47. The overhead, I should say—to put it in this form; the items which are starred on the last sheet are the items which the one mill provides for? A. Yes, sir.

Q48. Those items of contingencies? A. Yes, sir.

Q49. What is the total of the items starred in that last sheet? A. 869/1000 of a mill.

Q50. So that is an allowance of only about 13/1000 of a mill for contingencies included in the one mill? A. Yes, sir. 194

Q51. Now, I will ask you one question which summarizes the questions previously asked; this entire Exhibit No. 1, referring to all of it, is a correct statement of fact? A. Yes, sir. I would like to correct that statement of 13/1000; I think it is 130/1000 to the mill.

Q52. That is right; that is what I tried to say. These sheets indicate then the actual costs on the basis of the figures given of \$19.21 a kilowatt for services that compares with \$19 in No. 125? A. Yes, sir.

Q53. So the charge is 21c less than, the rate charge is 21c less than the figures worked out to? A. Yes, sir. 195

Q54. And R. I. P. U. C. 125 covers just two years, one \$19 a kilowatt, and the other one is charged per kilowatt hour 8 mills? A. Yes, sir.

Q55. The 8 mills charge covers only the operating costs as indicated on this sheet with an allowance

after including the overhead of 13/100 of a mill for contingencies? A. Yes.

Q56. That is correct? A. Yes, sir.

Q57. There is no duplication in those charges? I mean there are no items which figure in both? A. No, sir.

Q58. So that when you get both—both the \$19 and the 8 mills—you haven't been overpaid? A. No, sir.

Q59. The two together make adequate payment, one for your facilities and the other for operating costs? A. Yes.

197 Q60. Now, will you turn to Exhibit No. 2? Exhibit No. 2, Mr. Gray, consists of five numbered sheets followed by three sheets of tabulated data; that is correct? A. Five unnumbered sheets followed by three sheets.

Q61. Five sheets of text? A. Yes.

Q62. Followed by three sheets of tabulation? A. Yes, sir.

Q63. The purpose of this exhibit is to compare, is to show just how much schedule 68 pays the Naragansett Company; is that correct? A. Yes, sir.

Q64. Which shows that, both for 1923 and 1924, estimated; is that correct? A. Yes, sir.

198 Q65. And broadly speaking on analysis it will show that in any other year before; the charge—was the charge under 68 adequate to pay for operating costs, depreciation and taxes? A. That is correct—and insurance.

Q66. In other words, stated in another way, was the charge adequate to provide for a return, and interest on the investment, or was there a loss by meeting any charge in the investment? A. There was.

Q67. Now, to take this up in detail; the first paragraph contains a computation, and showing what the charge would have been in 1923 under rate 68? A. Yes, sir.

Q68. That was \$103,000; as shown in the second paragraph there were credits which would net the amount \$97,000? A. Yes, sir.

Q69. Is that correct? A. That is correct.

Q70. Are the statements in the two paragraphs correct? A. They are.

Q71. The next paragraph shows—the first two paragraphs show the costs of service in '23, I mean return from the service in '23? A. The minimum received.

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Q72. The next paragraph, going on, decreases the cost of that service but immediately the last paragraph, on the next page, indicates that the operating cost of the service was \$76,000; is that correct? A. Yes, sir.

Q73. In all my questions I am ignoring fractions of a thousand. A. Yes, sir.

Q74. The next three paragraphs taken together show the cost of the different plants facilities required for giving this service? A. Yes, sir.

Q75. And they show both the gross cost, total cost, and the cost per unit of service, that is, per kilowatt service? A. Yes, sir.

Q76. They show the amount of those costs which has to be allocated to the Attleboro Company upon the basis of what it demands? A. They do.

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Q77. And accordingly the paragraph at the top of the third page summarizes that information and indicates that the total cost in respect to these facilities, exclusive of any return on investment, is \$24,000? A. Yes, sir.

Q78. And indicates a loss of \$4000 before there is any return on the investment? A. Yes, sir.

Q79. Are those figures correct? A. Yes, sir.

Q80. Are the conclusions drawn correct? A. They are.

Q81. Your answer is applied to the entire analysis down to that point? A. Yes, sir.

Q82. At that point we start, for instance, a division of this schedule which deals with 1924—down to that point we have been dealing with 1923; am I right? A. Yes, sir.

203 Q83. The next following paragraph, the one in the middle of the page, shows what the net receipts will be in 1924 as estimated on this basis, if the 68 schedule remains in effect? A. Yes, sir.

Q84. That shows \$103,000 as the total receipts; the next paragraph to the one at the bottom of the page indicates the operating costs in '24, later distributing \$84,000 out of that \$103,000? A. Yes, sir.

Q85. Leaving only \$19,000 for all costs in connection with facilities used on plant and so forth? A. Yes, sir.

204 Q86. The next three paragraphs, those covered by page 4, indicate that without any charge for the investment that depreciation, taxes, insurance and the maintenance of lines will exceed this \$19,000; is that correct? A. Yes, sir.

Q87. Showing that there will be a loss of over \$6000 without any return on the investment in 1924; is that correct? A. Yes, sir.

Q88. That summarizes — that completes the analysis to that point for the year 1924; are the figures given in that analysis correct? A. Yes, sir.

Q89. And the conclusions indicated are correct?

A. Yes, sir.

Q90. The next paragraph shows what the return for the investment should be on the basis of 8 per cent. on net book value after the depreciation; is that correct? A. It is; yes, sir.

Q91. After allowing just that 8 per cent. on the net book value, schedule 68 will show a loss for 1923 of \$45,000? A. Yes, sir.

Q92. And 1924 will show a loss of \$50,000? A. Yes.

Q93. And that is the failure of 68 to provide operating costs and charges of 8 per cent. on the net book value after depreciation? A. Yes, sir.

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Q94. The last paragraph has to do with the method of calculation of applying 68? A. Yes, sir.

Q95. Then follow the three sheets giving data as to the plant, what I have called the facilities employed for service to the Attleboro Company; these sheets give the same data for 1923 that the corresponding sheets included in Exhibit 1 give for 1924; is that correct? A. Yes, sir.

Q96. Are these figures correct? A. Yes, sir.

Q97. Are they based upon correct principles? A. They are.

Q98. Are the results indicated sound? A. They are.

Q99. Now, just to make sure against any omission, take this Exhibit No. 2 as a whole; is it correct? A. It is.

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Q100. The figures given it, correct? A. They are.

Q101. The principles on which they are based, correct? A. They are.

Q103. And the conclusions indicated are sound?

A. They are.

Q104. Now, coming back to the general question on the new rate, what was the new rate service charge per kilowatt, \$19 per kilowatt of demand per year? A. (R. I. P. U. C. Nos. 68 to 101 produced.)

Mr. Chairman Bliss: They may be marked "Exhibit 3" in this proceeding.

Q105. Mr. Graustein: The service charge is \$19 a year a kilowatt? A. Yes, sir.

209 Q106. What are your actual costs for 1924 on your best estimate? A. \$19.21.

Q107. Per kilowatt? A. Yes.

Q108. In other words, the charge under the rate is 21c less than your estimate of the actual cost? A. Yes, sir.

Q109. And that actual cost figures no profit for the company except 8 per cent. on the return net book value after depreciation? A. Yes, sir.

Q110. Next, what is the charge per kilowatt hour under that? A. Eight mills.

Q111. How does 8 mills compare with the estimated generating cost of 1924, including overhead? A. That practically represents our general cost.

210 Q112. What maintenance is there in the contingency? A. 130/1000 of a mill.

Q113. A little over 1/10 of a mill? A. Yes.

Q114. Coming to the general question again as to the effect of 68; how much are you losing under the old rate as compared with your actual costs, how much a year? A. In 1924, \$50,918.37.

Q115. How much did you lose in 1923? A. \$45,611.33.

Q116. Who loses that money?

Mr. Dodge: The company loses it. I don't suppose he can go beyond that.

Mr. Graustein: Let me ask.

Mr. Dodge: I object.

Mr. Chairman Bliss: I think it is clear the company is losing the money. If the witness wants to testify as to what could be done with the equivalent amount of money, that is another matter.

Mr. Graustein: That is what I am leading up to.

Mr. Chairman Bliss: I do not think you ought to refer to that particular money—what can be done with the equivalent amount of money? 212

Mr. Graustein: I will withdraw the question and ask you this:

Q117. If the company were in receipt of that money would it have any effect upon—effect upon the Company's rate schedule for service to its other customers? A. It would.

Q118. Is that sum sufficiently large to have a material effect on the rate schedules? A. It would have a material effect.

Q119. I won't ask you to what particular rate schedules that amount of money might be applied to reduce, but I would like to ask you for just illustration how much of a difference that money would make if all applied to a residential light schedule? A. Nearly one-half a cent a kilowatt hour. 213

Mr. Graustein: That is all, Mr. Gray.

Cross Examination by Mr. Dodge:

Mr. Dodge: I wish to put in evidence, Mr. Chairman, the papers relating to the approval of the contract in 1917.

Mr. Graustein: Are you to cross examine Mr. Gray?

Mr. Dodge: Yes; I would like to put those in first because I would—No. 315 on your docket does not seem to contain a copy of the contract itself. I want to put the contract in evidence, and in the letter which accompanied it, it states:

“We are handing you herewith the rate covering special rate for electricity to be sold the Attleboro Company”——

and then goes on to refer to the contract.

Mr. Chairman Bliss: You (Mr. Carmichael) may get that contract.

BRIEF RECESS.

AFTER RECESS.

Mr. Chairman Bliss: It does not appear that the contract itself was filed with the Commission.

Mr. Dodge: I thought there was some doubt about that. Suppose I take one of the originals——

Mr. Chairman Bliss: It is very desirable that the contract should be placed in evidence here.

Mr. Dodge: I will offer, Mr. Chairman, the letter of May 14, 1917, from the Narragansett Electric Lighting Company to the Commission accompanying the filing of rate No. 68.

Mr. Chairman Bliss: That may be marked as "Exhibit No. 4" in this proceeding.

Mr. Dodge: I will offer one of the originally executed copies of the contract of May 8, 1917, between the Attleboro Company and the Narragansett Company.

Mr. Chairman Bliss: It may be marked as "Exhibit 5", and a copy may be substituted for it and marked Exhibit 5.

Mr. Dodge: The application referred to in the letter was acted upon by the Public Utilities Commission. I desire to read into the record the order of the Commission. It reads as follows:

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"On application of the Narragansett Electric Lighting Company for authority to grant a special rate, upon consideration it is ordered that for good cause shown said Narragansett Electric Lighting Company be, and it is hereby authorized to grant a special resale rate to the Attleboro Steam & Electric Company at the State Line between Rhode Island and Massachusetts, said rate to be shown in the tariff of said Narragansett Electric Lighting Company, R. I. P. U. C. No. 68, filed with and made a part of said application."

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May 23, 1917, is the date of that order. Now, if you have a copy of that rate, put that in.

Mr. Allen: 68?

Mr. Dodge: Yes. I show this as the next exhibit, it is entitled R. I. P. U. C. No. 68, Nar-

ragansett Electric Lighting Company special rate to Attleboro Steam & Electric Company.

Mr. Chairman Bliss: That may be marked as "Exhibit No. 6." I think a copy of that is attached to the notice that was served on the Attleboro Steam & Electric Company.

Mr. Dodge: Yes.

221

CQ120. Now, Mr. Gray, rate No. 101, which was the rate that was the subject of litigation in the district court, was a rate which was designed, like the rate now before the Commission, to return to the Narragansett Company its costs and a fair return? A. Yes, sir.

CQ121. And it was made up on a basis similar to that on which your rate of 125 is made up? A. Yes, sir.

CQ122. Now, under rate No. 101, which was your admitted new rate of 1921, the Narragansett Company received from the Attleboro Company, from July 1, 1923, to the end of the year, payments for the electricity on the basis established by that rate and not on the basis established by rate No. 68 and by the terms of the decree? A. It didn't receive anything under that schedule.

222

CQ123. Not ultimately; but you are aware, are you not, of the fact that under the terms of the temporary injunction we were obliged to pay at the rate of No. 101 for the last six months while the litigation was on and that the excess was afterwards refunded under the final decree? A. Yes, sir.

CQ124. And the amount of excess thus refunded was about \$12,000? A. I have not that figure in mind.

CQ125. You billed electricity to the Attleboro Company at the rate of No. 101 cost plus a fair return during those last six months, and if it did turn out as I can show is the fact that that rate exceeded the contract of 1917 rate by only \$12,000 for the last six months, how is it that you now say that for the year 1923 the contract operated or cost some \$50,000 to the Narragansett Company? A. The schedule 101 was billed under the 2,000 kilowatt demand which is far below the actual demand of the Attleboro Company.

CQ126. In Schedule 101 you undertook to get at the actual cost of the service, did you not? A. Not as far as that demand was concerned; that demand was an accrued demand and had never been changed. 224

CQ127. Right down through 1923? A. Yes.

CQ128. Do you think it fair to demand that in 3860? A. Yes, sir.

CQ129. In your bills which you rendered under the 1921 rate last year you gave, in great detail accompanying the bills, the actual cost of the service, did you not? A. No, sir; not as far as the demand was concerned.

CQ130. Have you a copy of the 1921 rate, rate No. 101? A. Yes, sir.

Mr. Dodge: Now, that rate I would like to have marked as an exhibit—that is a copy that was attached to the notice—then we may assume that rate 101 is before the Commission. 225

Mr. Chairman Bliss: Yes.

CQ131. Mr. Dodge: The rate which we were litigating about last summer, had the Narragansett

Company been successful in that litigation, would unquestionably remained in effect and been satisfactory to your company, would it not? A. The demand would have been increased.

227 CQ132. Where is the reference in this to the demand—in the rate? A. You will read paragraph A of the rate of service charge of such an amount as will equal the cost to the Narragansett Company, the taxes, insurance, depreciation, obsolescence, and any other fixed charges, and net the Narragansett Company an 8 per cent. dividend upon that portion of the cost of the plant which can properly be allocated to the general cost of electricity, to such electricity to the Attleboro Company. That part of the rate determines the demand and so-called service charges.

CQ133. That is substantially identical with your proposed new provision? A. Yes, sir.

CQ134. And it was under that provision which is in terms substantially identical with your proposed new provision that you rendered bills throughout the period, from 1921 to the end of 1923, to the Attleboro Company? A. Not in substantial accord with that.

CQ135. You rendered them under that rate? A. Under that rate but not in accord with section A. The demand was too small.

228 CQ136. Is not that something that you have since decided that you ought to claim? A. No, sir; that is your opinion—the Attleboro Company.

CQ137. I will ask you again; don't you know that the bills that were rendered under that rate No. 101 purported to cover the cost and a fair return? A. No, sir; they did not.

CQ138. And that you never claimed until this hearing, until the preparation of this final Exhibit No. 2, that there was any such loss as \$50,000 per year under that old contract? A. We did.

CQ139. You did? A. Yes; the demand being low was known to the Attleboro Company.

CQ140. That is not what I asked; did you ever make it known to them you were losing \$50,000 a year under the old contract? A. I would not say that that was made known directly to them.

CQ141. Didn't you personally, yourself, say to either Mr. Fales or Mr. Goldthwait, it more than paid the costs but was yielding perhaps only 2 or 3 per cent. return instead of 8 per cent. to which you felt you were entitled? A. I have no recollection of making such a statement. 230

CQ142. Don't you know that was the position taken by your company in dealing with the Attleboro Company? A. I do not know that that was the position.

CQ143. Just to make it perfectly clear let me ask you if the rate No. 125 is not substantially the same in its basis as the rate No. 101? A. On the basis it is substantially the same.

CQ144. Except you have fixed your kilowatt hour at 8c and have limited 8 mills—and have limited the arrangement to one year instead of carrying it through until 1938, as this one did? A. I might say that the data used in arriving at the rate is substantially the same. 231

CQ145. The theory is the same? A. The theory is the same.

CQ146. I suppose this method of figuring shown in Exhibit 1 is a matter about which opinions might

differ, is it not? That is, there are many elements in that computation? A. I would not say the opinions of those competent to know would differ materially.

CQ147. You don't think they would? A. No, sir.

CQ148. You have assumed a total demand or peak load, as perhaps you call it, of how much for the Narragansett Company? A. For 1923, 3600 kilowatts; for 1924, 3840 kilowatts.

CQ149. And you have apportioned that to a total of what? A. I think I don't understand the question.

CQ150. Well, you charge that proportion with certain expenses to the Attleboro Company? A. Yes, sir.

CQ151. And the proportion is 3600 to what? A. To the primary peak of this generating station.

CQ154. A sum of 64,000? A. In 1923 the primary peak was 55,000 in January and 63,970 in December; and in 1924, 63,970 in January and 64,615 in December.

CQ155. That takes into consideration only your primary load? A. Yes, sir.

CQ156. The Attleboro Company takes no secondary current? A. No, sir.

234 CQ157. You do dispose of a great deal of secondary current to other companies? A. Yes, sir.

CQ158. At a profit? A. Yes, sir.

CQ159. Which you do not take into consideration at all in apportioning these expenses? A. The secondary electricity pays no capital charges so far as the generating station is concerned.

CQ160. That, I think, is an answer to my question, that the secondary current is not taken into

consideration at all here and that your company disposes of large quantities of it at a profit? A. I can not answer that question with a yes or no because "here" means undoubtedly the whole schedule.

CQ161. You see what we are talking about—

Mr. Graustein: He differentiates generating station from substation and transmission and delivery lines.

CQ162. Mr. Dodge: I understand that, with reference to that table apportioning the returns from the generating plant, you take into consideration only the primary current? A. That is right. 236

CQ163. Now, when we come to transformation and transmission you take into consideration all the current that passes through your substation? A. Through the East Providence substation; yes sir.

CQ164. As to the generating costs which constitute considerably more than half of the \$19 called for in your new rate, you do not take into consideration secondary current at all? A. Yes, sir.

CQ165. As to the return on the generating plant? A. You said as to the generating cost.

CQ166. I am speaking about the return on the generating plant; if I did not state that accurately, I will correct it. A. Will you ask the question again, please? 237

CQ167. I think I have asked it before, but that there may be no doubt I will ask it again; I understand that of your \$19 per kilowatt of demand which you charge to the Attleboro Company in this proposed new rate more than one-half is made up of a return upon the investment in the generating

plant, and in apportioning that to the Attleboro Company you do not take into consideration the secondary power which is generated at all? A. That is right.

CQ168. That is right? A. Yes.

CQ169. Now, in apportioning the other expenses to the Attleboro Company you treat the Attleboro Company solely on the basis of the amount of current that it takes as compared with your other current that is sold? A. I think it would be necessary to differentiate between the electricity charge and the service charge in that question.

239 CQ170. Let us do that; you take your second table in Exhibit 1, which is headed "Transformation and Transmission Data," and which leads up to a figure of \$2 and some cents as the item that ultimately comes to make up your \$19. I am not quite clear that I understand just how that is figured; all that is based upon costs or book values on a certain part of your equipment, is it not? A. Yes, sir, depreciated.

CQ171. And how do you get at the proportion which you attribute to the Attleboro Company? A. We take such part as is equal to the ratio between the Attleboros taking at the East Providence substation and the total electricity delivered through such substation.

240 CQ172. And that is the substation at East Providence? A. Yes, sir.

CQ173. Where is the statement of the total amount taken through there? I think I saw it on the second page—estimated total load? A. That is correct.

CQ174. 13,000? A. Yes, sir.

CQ175. Now, that electricity goes through the East Providence station to a thousand of customers, does it not? A. Yes, sir.

CQ176. And in apportioning the costs to Attleboro you have treated Attleboro exactly as though it were a thousand customers instead of one; you have dealt solely with the amount of electricity?

A. The amount of electricity passing through the East Providence substation is the total in each case.

CQ177. And if the Attleboro Company, instead of being a single wholesale customer, were a thousand retail customers costing your company a lot more in the way of various overheads, this charge would be the same? A. That statement is not correct as far as the East Providence substation is concerned; that would cost more than a thousand customers. There is no difference, as far as the East Providence substation is concerned, whether electricity passing through such substation is ultimately delivered to a thousand customers or one customer which has a bulk delivery at the East Providence substation. 242

CQ178. Mr. Gray, that is a matter of argument but it is not in answer to my question; I said overhead charges of a thousand customers would be much more than the overhead charges to the Attleboro? A. We were referring to the East Providence substation; there is no difference at the East Providence substation. 243

CQ179. That is, you say this is the cost of maintenance of that station? A. Certain equipment between the generating plant up to and including the East Providence substation.

CQ180. Where, in your figures, have you taken into consideration the fact that the Attleboro Company is a single wholesale customer and not a group of 5000 individual customers so charged in your calculation? A. In this place right here (indicates).

CQ181. This is based on the cost of supplying the Attleboro Company which is a single company? I understand that those figures up to date would be exactly the same if it were 1000 individual customers or 5000. A. So far as the East Providence substation is concerned.

CQ182. Now, I say where in your later calculations or estimated cost have you taken into consideration that your overhead should be distributed in so far as it goes to the Attleboro Company at all on the basis that it is one wholesale customer and not a number of thousands of retail customers? A. There is no difference so it can not be taken into consideration.

CQ183. You haven't taken that into consideration anywhere then? A. I can't answer that question without giving a wrong impression.

CQ184. Can you point to any table where that consideration has been dealt with by you? A. Throughout the entire calculations this is based upon the cost of supplying the Attleboro Company with electricity. The Attleboro is one company. The costs due to one company are the only costs considered, therefore, there are no high overheads which are due to a thousand and one customers taken into this case.

CQ185. I understand, but will you point to any total where the apportionment of the cost to the

Attleboro is diminished at all from the fact that it is a wholesale customer and not 5000 retail customers, taking the same total quantity? A. That can not be answered.

CQ186. Is there any such table? A. There should be no such table.

CQ187. I have not asked you that; the first question is whether there is any such? You say you can not call attention to any table where there is any difference, any difference at all in your result from what it would have been if this had been 5000 customers? A. All the tables.

CQ188. Do you really mean that, Mr. Gray? A. Yes.

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CQ189. All right; tell me on your table Generating plant data what the difference is in favor of the Attleboro because it is a whole customer? A. On which table?

CQ190. That table entitled Generating plant data. A. There is no difference in the cost of applying to one large customer and a multiplicity of small customers so far as that table is concerned.

CQ191. Then it is not correct to say that in every table here the difference is shown or that there is a difference? A. It is correct to say that all the difference there should be is shown.

CQ192. That is another question—— A. The way your question is framed I can not answer it without giving a wrong impression.

249

CQ193. I don't think you will give a wrong impression to the Commission. I simply want to find out where zero is taken into consideration because you say there ought to be no difference, but just where, anywhere in your table which is de-

signed to get at the cost of serving the Attleboro—anywhere in your tables is there any distinction whatever made between—due to the fact that it is a wholesale customer? A. That question implies that there is a difference, the way you put it. I answered it one way or the other, but while there is a difference, there is no difference as far as these figures are concerned.

251 CQ194. I will accept that answer to that question; then you say throughout in estimating the cost you have estimated the Attleboro to bear the same proportion of cost which it would if it were 5000 or 10,000 individual customers taking the same quantity of electricity through that East Providence substation? A. Why, it is provided they should bear such costs.

CQ195. There is no table here and nothing in your computation anywhere wherein any difference is made in favor of Attleboro because it is a wholesale customer? A. That is the same question.

CQ196. The reason being you think no such difference should be made anywhere? A. No; I don't think that is right.

252 CQ197. What I want to get at is, if there is any table here anywhere in your figures which shows any such distinction I would like to know where the table is? Answer that, can't you, Mr. Gray? A. Not and give the impression which I desire to give as the correct impression.

CQ198. Will you forget, for the moment, the impression? We all know you claim there should be no difference. I understand, as a point of fact, that your tables do not make any difference? A. Because there is no difference so far as certain data is concerned, there should be a difference so far as other data is concerned.

CQ199. That is what I want to find out; give the data where you have made a difference on that ground. It is not in the generating plant data; it is not in the transformation and transmission data; is it in the generating and delivery cost? A. There would be a much larger amount possible per kilowatt hour to a small customer of the general expense.

CQ200. The question is whether the difference is shown in your table headed Generating and delivery costs? A. There is no difference there.

CQ201. Then that comes to the last table, Details of general expenses for 1923; is there some distinction made there because of Attleboro being a wholesale customer? A. No; there is no distinction. 254

CQ202. Then it is exact to say that nowhere in Exhibit 1 is such distinction made? A. Except that statement there should be no distinction.

CQ203. I am not asking you that; your counsel can bring that out. I want to bring out some facts favorable to my side; will you please answer that question? There is not anywhere in Exhibit 1 any distinction made in your return from the property or in your apportionment of general expenses which works any distinction because Attleboro is a wholesale customer? I am asking you simply about the fact concerning your table? A. No distinction is or should be made. 255

CQ204. Well, if you are bound to answer more than the question I put I will let you, if you want to argue the case, but I think we will get along faster if you will confine yourself to my questions. This second table, Exhibit 2, was, I think, handed

in at the Attleboro Company's office only on Thursday afternoon, was it not? A. I think that is right.

Mr. Dodge: I find myself in some difficulty in dealing with that because neither our accountant nor I, Mr. Chairman, saw that until this morning. We may have to ask the right to submit some comments on that, some figures in writing, within a few days.

Mr. Chairman Bliss: That may be done.

257 CQ205. Mr. Dodge: I understand, Mr. Gray— or do I understand correctly that this new rate is supposed to yield the Narragansett Company some \$50,000 a year more than the contract rate? A. Yes, sir.

CQ206. So that it would have yielded a very much less excess than that in 1922? A. I haven't figured it for 1922.

CQ207. Well, you know, don't you, that the difference between the contract rate and rate No. 101, as applied to Attleboro for 27 months down to the time when the litigation was finally concluded, was only about \$40,000? A. I have stated that schedule 101 was billed on an incorrect demand.

258 CQ208. Schedule 125 is based on information, upon information which you have since acquired? A. No; we had the information at that time but schedule 101 was billed on a 2000 kilowatt demand.

CQ209. The fact is that the difference between rate 68 and rate 101, as applied and as billed by you to the Attleboro Company, was only about \$40,000 for 27 months? A. Yes.

CQ210. How much of this rate 125 is anticipative or estimated return to the stockholders upon a fair value of the property? A. Eight per cent. per annum.

CQ211. How much does that amount to in dollars and cents? A. \$38,531.87 for 1924.

CQ212. Some very slight modification of your figures would, of course, entirely eliminate that \$4000 or \$5000 loss which your figures show? A. It would not take a great deal of modification, no.

CQ213. I mean, we are dealing with figures that are so large that a comparatively small change in some of your elements would show the old contract not to be operating at a loss but merely at an insufficient profit? A. You mean loss so far as expense other than return is concerned? 260

CQ214. Yes. A. Yes, sir.

CQ215. By the way, what was the total production of electricity of the company in 1923, the Naragansett Company? A. I have a figure here which shows the total output of our plant, as measured at various substations and at the generating plant—it amounts to 352,195,227.

CQ216. And how much of that went to the Attleboro Company? A. Measured at the same point, 10,171,600.

CQ217. That is about $1/35$ of the total product of your company? A. Yes.

CQ218. Now, the production of the expenses which you are charging to the Attleboro Company in your rate is much more than $1/35$, is it not? A. Certain expenses, yes. 261

CQ219. Well, of those generating plant expenses? A. Fixed or capital charge expenses, yes.

CQ220. I take it that one great reason why you say that your company needs more money from the Attleboro Company is because of the great increase in the plant since the Attleboro contract was made?

A. No, sir.

CQ221. That is not an important factor? A. No, sir.

CQ222. Don't you know that the average unit cost, instead of being \$90 was \$45 when this contract was made? A. Yes.

CQ223. So that to the extent in which 90 has to 45— A. If you say the unit cost the answer is yes.

263 CQ224. Now, those unit costs are charged primarily because of the great additions made to your plant at the high prices obtained since the war?

A. For the Attleboro and other companies, yes.

CQ225. Primarily for the Attleboro Company?

A. No, sir.

CQ226. Have not the additions which you have made to your plant during the last five or six years had to do with the New England Power Company supply? A. No, sir; the Attleboro load has grown as fast as our other load.

CQ227. Have you not built large additions to your plant primarily for the New England Power Company? A. No, sir; we have not.

264 CQ228. Have you done anything because of the large amount of electricity you have been supplying them? A. Not to the plant, no.

CQ229. Not to the plant at all? A. No, sir.

CQ230. You say that double the average unit cost in the last six years has been due in any sense at all to the Attleboro Company? A. It has.

CQ231. In what way? A. Because their load has grown as the average load has of the Narragansett Company.

CQ232. Is not your plant today adapted to an output which is more in excess of the daily needs than was the situation in 1917? A. No, sir.

CQ233. It is not the fact? A. No, sir.

CQ234. It is not overdeveloped at all? A. No, sir.

CQ235. Not even in proportion to 1917? A. To show that it is not overdeveloped we are contracting for boilers which will be installed this year.

CQ236. When and where was the Attleboro demand taken, this 3840? A. At the East Providence substation. 266

CQ237. And where? A. Pardon me.

CQ238. Where? A. That was measured at East Providence on February 3, 1924, by curb drawing instruments.

CQ239. And when and where are your monthly figures of the peak primary load of the Narragansett Company taken? A. 1924 they were estimated being subsequent to the dates when they could have been taken. We expect ordinarily the primary peak to be early in the year, December.

CQ240. When did you last get an actual figure? A. The actual figure obtained by us in December, and that was subsequently increased due to the reservation made by one of our customers which increased the primary power of his plant. 267

CQ241. What was the actual figure for December which, I understand, is the last time you got an actual figure? A. That is the figure contained in this exhibit.

CQ242. That is, the figure of January 1, 1924, 63,970? A. Yes, sir; 63,970.

CQ243. And that figure with a slight increase you have taken for the entire year 1924? A. That is right.

CQ244. What was the figure at the beginning of 1923? A. 55,000.

CQ245. And at the end of 1923?—63,970. A. That is correct.

CQ246. Then for the year 1924, while you have assumed a plant increase, book value of the plant, you have assumed substantially no increase in your peak primary load? A. Not for that year.

CQ247. The assumption that no substantial increase there would, of course, diminish the proportionate cost to the Attleboro Company of electricity as you figured it? A. If there were any increase we would expect to find it in January.

CQ248. That does not answer my question; I mean as a matter of mathematics increasing the peak primary load would decrease the cost to Attleboro? A. That is right.

CQ249. What proportion of your output goes to the New England Power Company? A. I haven't that figure available. I would say a very large proportion.

CQ250. Can't you be a little more definite than that, Mr. Gray? A. I might say 50 per cent.; that is only a rough idea.

CQ251. Fifty per cent.? A. Yes.

CQ252. And that business has developed entirely since the contract of 1917? A. I haven't in mind now without looking at the figures when that has been developed. I could probably consult figures and answer that question.

CQ253. You are not prepared to say it was not entirely after 1917? A. No.

CQ254. Now, you are asking Attleboro here to pay a part of the cost to handling business for that enormous new customer that you didn't have in 1917, are you not? A. No, sir.

CQ255. Not at all? A. No, sir.

CQ256. You say the handling of the business to that customer who now takes at least 50 per cent. of your output has not caused you to develop your plant vastly more than you would have if that customer hadn't come in? A. It has not.

CQ257. It has not caused any increase? A. No, sir.

272

CQ258. You haven't got a new, a single new appliance or part of your plant which was put in because of that customer? A. Not that is given any consideration in these figures.

CQ259. Have you eliminated a part of your plant from these figures? A. Oh! certainly.

CQ260. Of that generating, cost of the generating plant? A. Do you mean our entire plant or the generating plant?

CQ261. I am speaking now of the generating plant. A. Then there has been—nothing has been done for the large customer.

CQ262. So that your generating plant is exactly what it would have been today if you hadn't got that New England Power Company business? A. That is right.

273

CQ263. Then you would have been generating, or qualified to generate, a tremendous excess over what you needed? A. It is customary to have that.

CQ264. I am not asking you what was customary—what would be, if that was the cause of the tre-

mendous excess capacity? A. No, sir; I would not say so.

CQ265. You should cut out 50 per cent.? A. If we were we would not be putting in boilers this year.

CQ266. Speaking of what there is there now. A. We have not an excess capacity over and above the needs to carry our primary load.

CQ267. Is that because the New England Power Company takes mainly the secondary current? A. That is right.

275 CQ268. How much of the current it takes is secondary current? A. That is impossible to state because they purchase both primary and secondary.

CQ269. Can you give us some idea? A. I can give no idea because it is impossible to calculate.

CQ270. That could not be done? A. It couldn't be done.

CQ271. You can not say how much of the secondary current you do sell in the course of a year? A. No, sir; not as far as that particular customer is concerned.

CQ272. How about the high cost of installation put in for the New England Power Company's business? A. I have stated there was nothing put in new for the New England Power Company.

276 CQ273. No installation? A. I said so.

CQ274. I did understand you to say that most of the power that the New England Power Company takes is secondary? A. I didn't make that statement.

CQ275. Then I misunderstood you. A. I state I can not tell how much was secondary and primary.

CQ276. Is it not a fact that most of it is secondary? A. I didn't make that statement.

CQ277. Is it not a fact? A. How can I tell if I don't know which was which?

CQ278. I thought you might at least approximate to it. A. Not if I can not separate them, I can not tell which is more.

CQ279. Then you can not give the Commission any notion whether they take more secondary power than they do primary? A. No.

CQ280. You can not help us at all on that point? A. I can not.

CQ281. But whatever secondary power they take and however large it may be, and however profitable to you it may be it does not affect at all the proportion of the generating plant cost which you are charging to the Attleboro Company? A. The capital charges, no. 278

CQ282. That is, you assume that the New England Power Company, to the extent that it gets secondary current, need not contribute anything towards the capital charges of your generating plant? A. That is true.

CQ283. Similarly with other secondary current users? A. Yes.

CQ284. Who are such other users, or some of them? A. The Pettaconsett Pumping Station.

Mr. Graustein: I don't know to what extent the Commission wants to go— 279

Mr. Chairman Bliss: I think the question is a proper one.

A. The Pettaconsett Pumping Station, the East Providence Water Works, the Westerly Light &

Power Company, Field's Point Manufacturing Company—that is all that I can recollect at the present.

CQ285. Mr. Dodge: Some of those are sub-companies of the Narragansett? A. One of them.

CQ286. How about other sub-companies of the Narragansett? A. They take only primary power—the Wickford, Narragansett and Seekonk, only take primary power.

CQ287. How many other electric companies are there over the demand of 3,600 kilowatts or over? A. Where?

281 CQ288. Taking power from the Narragansett Company. A. None.

CQ289. What is the largest one next to the Attleboro? A. I couldn't say, offhand, which company.

CQ290. Is there any one that takes 1,500? A. No.

CQ291. 1000? A. No.

CQ292. They are all small? A. They are smaller, very much smaller.

CQ293. So that this new rate 125 is really aimed solely at the Attleboro Company? A. It was designed particularly with the Attleboro Company in consideration.

282 CQ294. And you put it in the form of a general rate primarily to avoid some legal difficulty that may be thought to arise if you simply made it applicable to the Attleboro Company alone? A. We put it in the form of a general rate so as to be able to take in all utilities.

CQ295. Was that your prime motive? A. I couldn't say whether it was the prime motive.

CQ296. You put it in this form so as to avoid legal difficulty, didn't you? A. That might have been the reason.

CQ297. You haven't got any company in sight, or within a thousand miles of being in sight, an electric company that is going to take 3,000 kilowatts of your power, have you? A. We haven't now. I would like to correct a previous statement I made in regard to having no public utility of a size equal to this, and change that statement to—that we have a public utility customer of much larger size.

CQ298. That is the New England Power? A. That is the New England Power Company.

CQ299. I should have limited my question to electric lighting companies? A. I don't know the difference between electric lighting and the New England Power Company, or the Rhode Island Power Transmission. 284

CQ300. Which is your customer? A. We sell to the Atlantic Power Company.

CQ301. The Atlantic Power Company? A. Yes.

CQ302. What does that do with the current? A. We don't trace the current if it is billed to the Atlantic Power Company.

CQ303. You know where it goes, don't you? A. We presume that some of it goes in various directions, some going north through Pawtucket, some of it into Massachusetts, some to Fall River.

CQ304. You sell any power direct to the New England Power Company? A. Not under that name; we have no contract with the New England Power Company as such. 285

CQ305. You have already told us they get some 50 per cent. of your current? A. I am using the name interchangeably, referring to the transmission——

CQ306. The New England Transmission Company feeds current on the New England Power

Company, does it not? A. Presumably so much as is not utilized in Rhode Island.

CQ307. As the Rhode Island Transmission Company it is an electric lighting company? A. I believe they are.

CQ308. Then this rate is applicable to that? A. If they should so desire to take the rate.

CQ309. They have an alternative, which we haven't? A. You have an alternative; you could take this rate or any other rate, on file, with this company.

287 CQ310. Do you have a contract with the Rhode Island Transmission? A. We have with the Rhode Island Electric Power Company; presumably they sell power to the Rhode Island Power Transmission Company.

CQ311. You know whether they do or not? A. I assume that they do.

CQ312. Was notice of this hearing given to them? A. I didn't assume they were particularly interested.

288 CQ313. Notice was specifically provided for to the Attleboro Company; all I am coming to is this—we can shorten it right off, Mr. Gray, if you will tell us whether or not, by calling attention to the Atlantic, whether the Rhode Island Transmission Company, you meant in any way to qualify your statement that this rate is a rate made primarily for the Attleboro Company? A. This rate is made with the Attleboro primarily in consideration; it is assumed that they will be the first customers to be supplied under this rate.

CQ314. And so far as you can see the only one? A. We know of no other at the present time.

CQ315. So that this rate does not affect the Atlantic Company or the Rhode Island Transmission,

or the New England Power Company? A. Not unless they should take, purchase under this rate.

CQ316. Which you don't expect them to do? A. No.

CQ317. I say you don't expect—— A. We don't expect, no.

CQ318. As a matter of fact, this rate is not applicable to a customer who takes a large quantity of secondary current, is it? A. No; that would be a higher price than secondary electricity would be sold for.

CQ319. So that the contract is totally inapplicable to the Atlantic situation? A. So far as the surplus of electricity is concerned.

290

CQ320. And there is nothing in this contract, this contract or this rate rather, this rate relates only to primary current? A. Primary current.

CQ321. Now, you have said, Mr. Gray, that \$50,000 would amount to about one-half of a cent on rates to your Electric Lighting Company individual customers? A. Yes; I estimate that that would be a reduction to residence customers.

CQ322. What is the total amount of the gross receipts of your company from such customers? A. I haven't that figure here.

CQ323. Can't you get that? That is what comes under the head of "Commercial Lighting." A. I believe that I can obtain figures if you wish me.

CQ324. Would that come under commercial lighting? A. No; it would come under residence lighting.

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CQ325. That is a sub-division? A. Sub-division of lighting. I could obtain that figure if you desire.

CQ326. Right now? A. Yes.

292

Jesse E. Gary—Cross

CQ327. I wish you would. A. \$1,137,523.87.

Mr. Chairman Bliss: That is for 1923?

A. That is 1923.

CQ328. Mr. Dodge: And if you applied to your \$50,000 which you ask the Attleboro to pay in excess of what it now pays on that account it would increase the total by what percentage? A. Decrease.

CQ329. Decrease the total by what percentage?

A. By something less than 5 per cent.

CQ330. The total was—— A. —\$1,137,000.

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CQ331. It would be something less than 5 per cent.? A. Yes, sir.

CQ332. Now, your present rate that you charge householders is what? A. Fifty cents service charge plus 7c per kilowatt.

CQ333. And you could hardly reduce 7c by something less than 5 per cent., could you? A. We would reduce it to 6½c. We would make the rate 50c service charge plus 6½c.

CQ334. That would be more than 5 per cent., would it not? A. Sure, because the current ratio is only a part of the total charge, so if we reduced the whole thing 5 per cent. it would be more than it is in part of it.

294

Mr. Chairman Bliss: Do your figures show what part of the \$1,137,000 is due to the service charge and what portion is due to the current charge?

A. The service charge is \$274,935.

CQ336. Mr. Dodge: How many customers have you? A. On that rate we rendered in 1923, 532,000

bills for the twelve months. I believe it is in the vicinity of 50,000.

CQ337. 50,000 customers? A. That is my recollection.

CQ338. Now, the rate which you charge them has been reduced at least twice while this contract with Attleboro has been in effect, has it not? A. What do you mean, since 68 was in effect?

CQ339. Yes. A. It was increased and then reduced.

CQ340. Let me ask you, to refresh your recollection if I can refresh your recollection by suggesting that your rate was 9c flat in 1917 when this contract was made? A. Then it went to the service charge of 50c plus the current charge which was in effect an increase of the rate, that is, we received more money from our residence customers after that time than prior to that time.

296

CQ341. Then you have since reduced it twice? A. It has been raised, then reduced twice, that is my recollection.

CQ342. While this contract was in effect? A. It was producing after 1923 more per kilowatt hour than it produced when this contract was made.

CQ343. I don't question that; the fact is your rate has been reduced twice since this contract was made? A. After being increased.

CQ344. Can you call my attention to any suggestion in any of your annual reports that you had reduced the rate since 1917? A. I don't know whether it is in the annual report or not.

297

CQ345. Perhaps you don't want to stand by the statement in your annual report; I see that in your 1922 report it was stated, as a matter of reduction of rates that the rate of 9c was to be eliminated

and the rate of 7c plus a service charge to be substituted? A. What year was that?

CQ346. This was done August 1, 1922. A. I believe that refers to the stop class which was eliminated which states that no rate would need less than 9c per kilowatt hour.

CQ347. This is one of the reductions then you are speaking of? A. That is the elimination of the stop class, which can be considered as a reduction to a certain part of the customers.

CQ348. It was—that was estimated it would save the public \$140,000 during the first year; do you remember that? A. Yes.

CQ349. Then afterwards there was a further reduction; when was that made? A. I haven't the date of that.

CQ350. Well, it says here that there was a further decrease on September 1, 1922, from 7c to 6.9c? A. That is due to the coal clause and is not in effect a reduction.

CQ351. Then the 7c is still the rate? A. The 7c is still the rate.

CQ352. And that is a rate that is below the rate charged in Boston and many cities that are nearer to Providence, is it not? A. That is not the entire rate which—I am taking into account the 50c service charge also.

CQ353. Then it is 9.12c for 1923?

Mr. Chairman Bliss: That is the average you received from your lighting customers per kilowatt hour?

A. This is residence customers, 9.12c.

CQ354. Mr. Dodge: That is assuming—or shows a kilowatt consumption of how much? A. The

average for the year 23.4 kilowatt hours per customers.

CQ355. And you say that total would come to what? A. One million.

CQ356. No; the rate will come to what? A. 9.12c.

CQ357. And that is below the flat rate in Boston, is it not? A. My impression is that the Boston rate is now 9c; I am not sure of that.

CQ358. 9½c, I think. A. I can't state positively.

CQ359. And New Bedford is 9½c? A. I haven't in mind the Bay States.

CQ360. And also Lynn, where there is an extremely successful company, 9½c? A. I can't answer that as I haven't the knowledge. 302

CQ361. At all events the rates which you are now charging, however much you would like to reduce them, are not unreasonably high, are they? A. I should not say they are unreasonably high.

CQ362. What is your next largest group of customers? A. Probably the small, the medium sized stores.

CQ363. That would come under commercial lighting? A. But I haven't anything separated other than residence customers except by rates.

CQ364. What was your gross income? Let me ask you this for 1923. A. I haven't that figure.

CQ365. Can you get that here? A. It does not seem to be available. I think you will find that in the annual report. 303

Mr. Dodge: The annual report for the year 1923 which I would like to offer in evidence from which—there is no objection—I am reading contains an income statement.

Mr. Chairman Bliss: That may be marked "Exhibit 7".

CQ366. Mr. Dodge: I have only a few more questions to ask, Mr. Chairman. The income account for the year 1923 shows a total revenue from all sources of \$6,636,601.17; total expenses, depreciation, interest and other deductions from income \$5,040,752.23; leaving a balance of \$1,595,848.94, disposed of by paying dividends \$1,302,456 on which there was a credit to service \$293,392.94. The dividend paid, Mr. Gray, I believe, is an 8 per cent. dividend? A. That is right.

305 CQ367. On the par value of the shares? A. Yes, sir.

CQ368. And the gross earnings of the company during the years since this contract has been effective with the Attleboro Company have gone ahead with great rapidity, have they not? A. The gross earnings since 68 went into effect?

CQ369. Yes. A. I believe the gross earnings have continually increased.

CQ370. In 1917 they were \$2,566,000; in 1923, \$6,600,000. Apparently there is no need to charge Attleboro any more to assure the stockholders there an 8 per cent. dividend, that you do not claim? A. If we maintain the same rates to our other customers.

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CQ371. It is not your intention, of course, to do anything with any extra money you get from Attleboro that will endanger the 8 per cent. dividend? A. We would apply it to our other rates.

CQ372. When your surplus went up between 1922 and 1923 by over three times the amount of the additional money that you want to get from Attle-

boro, to what rate did you apply that additional sum, to the reduction of what rates? A. Our reductions of rates have been primarily on this lighting rate that we have previously mentioned, and I believe there was a reduction somewhat on certain power schedules.

CQ373. Have you reduced rates at all in 1923?

A. In 1923, no; 1924, I think in January, there was a reduction that went in—either in the latter part of 1923 or early in 1924.

CQ374. And that, as anticipated, reduced the income of the company how much? A. I haven't it in mind.

CQ375. That is a small item, is it not? A. I don't remember the amount of that reduction. I can ascertain that if you desire it.

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CQ376. I wish you would; now, are you aware of the fact that for the three months ending March 31, 1924—now, that reduction has been effective since the first of January, has it not? A. I don't remember the date; it was either the latter part of 1923 or the early part of 1924.

CQ377. Are you aware of the fact that with that reduction in effect the surplus of your company, after making provision for the dividends for the three months ending March 31, 1924, was \$248,000? A. Well, if you are reading from the surplus I assume that is correct. A surplus always accumulates in the first few months of the year.

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CQ378. You generally hold for the year the surplus you make in the first three months? A. I should say that is customary. Of course, there are months which go the other way.

CQ379. You would expect that the remaining nine months should not show a loss. A. That will be impossible to tell for this year due to the threatened business depression. The mills in Rhode Island are—some on half time, some have been closed; and there is a general depression and our kilowatt hour for the past several weeks have shown a decrease over the same period of last year, so I would not be sure that this year that surplus will hold.

CQ380. You can not be certain in the ordinary year unless something striking takes place whether the profit in the first three months would be increased rather than diminished for the remaining nine months? A. We would expect to have as much at the end of the year.

CQ381. What I am coming at is this: that you do not need \$50,000 more from the Attleboro Company to make you a successful company with dividends reasonably assured on reasonable rates charged to your customers, do you? A. Not as long as we maintain our other rates.

CQ382. Which are reasonable? A. That would depend on the definition of reasonable.

CQ383. But you haven't had a complaint about them for years? A. I don't think but that is just and reasonable.

CQ384. I am asking you the question; you haven't had a complaint for a great many years, have you? A. You mean a formal complaint?

CQ385. Yes, presented before this Commission under the statute. A. No, I believe there is no formal complaint.

CQ386. There never has— A. I don't recall of one.

CQ387. And you would be the last one, if asked yesterday or the day before, to admit that you were charging rates that were not reasonable to any class of customers, would you? A. I don't know what I would say yesterday.

Mr. Graustein: He might say he was charging discriminately.

Mr. Dodge: Discriminatory rates approved by this Commission under the statute.

Mr. Chairman Bliss: The time for the argument is later. The rates have to be reasonable from the public.

Mr. Dodge: Yes, Mr. Chairman; I am proceeding on the assumption that the burden is on the company. 314

Mr. Chairman Bliss: I assume the customer who is being charged should be charged what is considered a rate perfectly reasonable. There is the standpoint we have got to consider under the definition of the statute, which means a reasonable rate, which means the Company must get a reasonable return upon its property devoted to public use, and should maintain among its various classes of customers schedules that were equitable between the various classes of customers.

Mr. Dodge: That suggestion, Mr. Chairman, is a fundamental point here. We do not claim—it may shorten this hearing if I state right now that we do not claim that this contract price which we are paying in Attleboro is a contract price which at the present time yields of itself a fair return to the Narragansett 315

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Jesse E. Gray—Cross

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Company upon the basis of the part of its plant devoted to the Attleboro business. We do not agree that these figures here—we do not admit that the contract is actually causing an out of pocket loss, but we do say it has a return to them, a less than 8 per cent. return on that part of the property and I may add that we do not claim that it is proportional to the rates, all the rates that are being charged to other customers. It is a contract made under special circumstances with a rate which was not the uniform rate and which turns out to have been lower than they would have been willing to put into the contract now. What we claim is that, being contained in the contract, it can not be set aside by the Commission or the Courts unless it is not merely a losing venture for the Narragansett Company but causing them such a loss that they can not treat customers reasonably, or can not be assured of their return. That is the position we take, and in view of Judge Brown's language of his opinion and the language of the Supreme Court from which he quotes, and it is my contention, of course, that this company as it is now is amply able to take care of its customers in Rhode Island reasonably and at reasonable rates, to set up a large surplus after paying dividends without increasing the rate to Attleboro at all.

Mr. Chairman Bliss: The only reason why I referred to the matter was the term "reasonable" should be used in the same sense in which it is used in the statute, and any comment back

and forth as to rates being reasonable, why, a customer might think his rate is reasonable that might not be reasonable at all between various classes of customers. I recognize the contention, of course, that you make. It is a difficulty that has occurred to me in connection with the matter as to how far the company should be bound by the terms of its contract, if it is a matter whether they can come in here and say, "We want to avoid all the unpleasant features of this contract; we want to get our full return." It is then the duty of the company to bear its burden up to the point where they affect any equity to the general public.

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Mr. Dodge: That is exactly the position we take—I think that is all.

Redirect Examination by Mr. Graustein:

Q388. You have testified that this contract involved a current loss of \$45,000 or \$50,000; is there any reason to think that, if the contract was to run its full term on the rates fixed in 68, it will finally work itself out where it pays its full share of the cost to the company? A. It will not.

Q389. Is there any chance of that? A. In my opinion there is none.

Q390. Is there any chance of that paying a fair return? A. There is none.

321

Mr. Dodge: What paying a fair return?

Mr. Graustein: Rate 68.

Q391. You don't think there is any chance that the length of the contract will bring about any

advantages to the Narragansett Company? A. I am strongly of the opinion that it will bring greater disadvantages.

Q392. Than it now brings? A. Than it now brings.

Q393. In other words, your anticipation is that the loss to the Narragansett Company from the rate 68 will increase rather than diminish? A. I am.

Q394. In other words, it was \$45,000 in 1923, estimated \$50,000 in '24, and you anticipate it will be an increasing loss? A. I am morally certain there will be an increase in loss.

Q395. Mr. Gray, what is the chief difference between the cost of serving the Attleboro Company and the cost of serving an ordinary residential light customer? A. The loss?

Q396. The chief difference. A. The chief difference in cost is due to the distribution lines and the expenses due to the delivery of a small amount of electricity. They occur after the electricity leaves the substation; up to the substation the electricity is in bulk and the kilowatt to supply one customer is the same kilowatt to supply another customer, or any other customer.

Q397. Mr. Dodge was concerned with why your figures for cost to Attleboro differ from figures that would show the cost to the lighting customer, for instance, I think from your answer to one point—where the enormous difference would occur is under transformation and transmission data where the cost here is given for the actual transmission line and facilities running from the substation to the point of delivery to the Attleboro Company and the corresponding cost for delivery to lighting custom-

ers; is that true? A. Yes, for the same quantity of electricity we deliver to lighting customers which would supply a large territory and would require a large investment in distribution lines.

Q398. That investment would be charged and is, in fact, your rate making charge to that service, and not charged to this service? A. No part of this multiplicity of distribution lines is charged to the Attleboro service as computed in these figures.

Q399. One other question; will you tell me if this proposition is correct in regard to the question of the Attleboro Company's demand and the question whether a different return, a fair rate of 68, as Mr. Dodge has it \$44,000 a year or less and \$50,000 a year is this, that there are two things go into making up a bill of electricity—one is the quantity of electricity and the other is the rate. The point Mr. Dodge was talking about depended not upon the rate at all but upon the amount of demand which was upon the company? A. Yes; there are those two primary factors that enter into all consideration of rates, one is what we ordinarily term the demand which controls the investment necessary to supply the customer, the other is the use of electricity which determines the so-called operating cost. 326

Q400. To make an illustration: one is the cost of flour a pound, and the other is the number of pounds of flour in the bag, and in this case the Attleboro Company was actually charged for less flour than there was in the bag—is that the situation? A. Yes; they were charged for a less demand than they were actually taking. 327

Q401. Mr. Chairman Bliss: Why didn't you charge them for the full demand? A. I think that was through inadvertence. We have been charging for 2,000 kilowatt demand and we negotiated for a satisfactory rate, a rate which would be satisfactory to both parties.

Q402. Did you have the right to charge for an increased demand under the terms of this contract? A. We did.

Q403. Mr. Graustein: Under the terms of 68 there is no demand charge? A. No; the only one that took into consideration demand is schedule 101, which I presumed you were referring to.

Q404. So that the apparent difference between—Mr. Dodge apparently was questioning whether this rate 125 was a whole lot bigger than 101? A. It is not.

Q405. It is the same rate; the difference in figures is the difference in the charge for the full demand used? A. That is correct.

Q406. Mr. Dodge pointed out that in 1923 the demand increased from January to December very materially, and in 1924 in our estimate we didn't allow for a similar increase; is it true that increase took place practically entirely in December? A. Yes.

Q407. So if we had a difference in 1924 it would have made only a minor difference? A. Yes.

Q408. And affect the average for the year by only one-half; is that correct? A. That is correct.

Q409. Is it true that the supply of secondary electricity to any customer tends to reduce the cost of charge for primary electricity to all your customers by reducing the unit costs and the generat-

ing costs? A. It does if the nature of the load due to the secondary electricity is a desirable nature.

Q410. In other words, if they are going to make fluctuations in the load by increasing the number of kilowatt hours put out from your station you decrease your expenses on your rate and expenses of operation per kilowatt hour? A. Certain expenses are decreased.

Q411. The same number of watchmen may keep the generating station going whether it is generating electricity in the peak hours or not? A. Not.

Q412. So the more electricity is generated the less the electricity costs per kilowatt hour? A. That is correct.

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Q413. And in that way some secondary electricity may be a benefit to the purchase of primary electricity? A. It is a benefit.

Q414. Mr. Chairman Bliss: At the time that you came before the Commission in 1917 for its approval of this special rate contained in that contract the Commission urged upon you the question whether by that rate and in that contract you had protected yourselves so that you could do business at a profit and not throw it back upon the other consumers of the company? A. Yes, sir; you asked us that.

Q415. That was stressed over and over again? A. It was.

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Q416. How did you come to make that blunder in your estimate? What is the reason it went wrong? A. Our estimates were based on plant values existing up to the time of negotiating this contract. Since then the World War has occurred and has been attended by an enormous increase in

the cost of equipment so that the unit cost of the plant today is valued at nearly twice what it was at the time of entering into this contract.

Q417. Did it cost twice what it did for the actual cost figures to your company, twice what they were before the war? Don't you mean replacement cost would be twice what it was before? A. They were twice what we estimated our costs would be in making this contract. This contract was at a flat price and the plant costs were those that were estimated to exist for the period of the contract.

Q418. Did you protect yourself in the contract upon the matter of fuel cost? A. Yes, sir; and taxes were the points that we were protected on; and we were not protected on investment cost.

Q419. So that this deficiency in return that you claim now is due to your failure to estimate the increased investment cost which would be necessary for facilities to produce the same amount of output that the pre-war prices did? A. Yes, sir.

Q420. How about the economies in the production of electricity? Did you take those into consideration at the time you made the contract? A. We estimated what we would expect to be able to generate electricity at during the period. The operating costs have been satisfactory in spite of the added labor cost, and coal cost. We have been able to hold our generating cost fairly uniform.

Q421. Then practically this whole deficit which you are seeking to make up now in order to secure the full 8 per cent. return is based upon your failure to appreciate changes that would be brought about in the costs of your generating machinery

and transmission lines? A. Yes; that is the consideration that makes the contract a losing one.

Q422. Is that apparent from the figures in the exhibits you have presented here—Exhibits 1 and 2? A. No; I don't believe that would be apparent.

Q423. Have you any figures showing the gross amount that you have received from the Attleboro Company and the net receipts of your company covering the period of the contract from 1917, in tabulated form? A. No; I haven't those, Mr. Chairman, here. We were rendering bills under schedule 101 for quite an extended period and since that time adjustments have been made in accordance with the decree of the court. 338

Q424. Now, the only year you have complete figures for then is the year 1923 with estimates for 1924? A. Yes, sir.

Q425. You haven't figures for 1917 on to show how that particular rate and particular contract operated in reference to your company? A. No, sir; I have some other figures prepared from the outside sources. They show a loss—not prepared by our company.

Q436. Now, taking your Exhibit 2, you have set out in paragraph form but not in tabulated form the results for the year 1923? A. Yes, sir.

Q437. And you show that the gross receipts were \$109,981.80? A. Yes, sir. 339

Q438. Which appears on page 3, Exhibit 2; now, you state that there are certain costs you have to pay with reference to substation and transmission lines which forces you to pay out of that gross amount \$6,441.25—appearing on page 4 at the top—

Mr. Graustein: Those are figures for 1924, estimated.

A. That is for 1924.

Q439. Mr. Chairman Bliss: Have you the corresponding figures for 1923? A. Yes; that is on the first page.

Q440. The total amount received in 1923, the gross receipts were \$103,582.60? A. Yes, sir.

Q441. Now, from that you deduct the same amount that you do in 1924, \$6,441.25? A. Yes, sir.

Q442. Leaving \$97,141.35? A. Yes, sir.

341 Q443. You then take out the estimated cost of that of \$76,640.90? A. Yes, sir.

Q444. Leaving net receipts of \$20,500.45? A. Yes, sir.

Q445. Now, you take out depreciation, insurance and taxes, amounting to \$16,785.09? A. Yes, sir.

Q446. Leaving a balance of \$3,715.36; then you take out the depreciation on your cables, transmission lines and so forth, the amount of that for 1923, \$24,826.48—

Mr. Graustein: That includes all the depreciation.

342 Q447. Mr. Chairman Bliss: The first item is maintenance, depreciation and taxes, \$4,478.74, is it not? A. Yes, sir.

Q448. Now, you have rated a deficit of \$763.38, and again you take out an item \$3,562.65—that still leaves a balance of \$152.71 to which is to be added your final item of maintenance, depreciation and taxes on transmission and line of \$4,478.74,

and that leaves you short \$4,631.45 after paying your expenses prior to any return on the investment? A. \$4,326.03.

Q449. And a similar figure for 1924 shows a shortage of \$6,781.95? A. Yes, sir.

Q450. You haven't anything to show the operation of—the actual effect there upon your revenues of serving this company for the years between 1917 and 1923? A. No; they would be a loss in all cases.

Q451. Was the loss more severe than this is? A. I couldn't state without going into some form of calculations.

Q452. Have you made any detailed statement here of your probable losses up to the end of the period of this contract? A. No, sir.

Q453. The contract is for twenty years, expiring in 1937; do you think the losses would increase year by year to the termination of the contract? A. In total amount, yes.

Q454. That is, you mean the deficit would be greater? A. Greater than \$50,000.

Q455. In each year? A. Yes.

Q456. For the remaining portion of the contract? A. Yes.

Q457. Now, the year 1917, what date did you make this contract? I have it here; it is dated on the 8th day of May. You were familiar with the conditions brought about by the World War, were you not? A. No, sir; the prices hadn't taken the upward tendency at that time and this contract, the negotiations and the figuring were made in the previous—

Q458. Hadn't prices of copper and metal gone up tremendously in May, 1917? A. Not tremend-

ously—there was a lag behind but at the end, on our going into the war they had taken an upward tendency but they had reached nothing like the heights they have reached since then. At that time it was anticipated the war would be of short duration.

Q459. Did you take into account at all, in making that contract, the matter of increased cost of generating units and transmission lines? A. Not at all; they were based entirely on data obtained prior to that time.

347 Q460. What are the percentages of the increases, if you know, in the cost of the generating machinery and plants? A. I haven't those figures available.

Q461. You couldn't tell us? A. At the time of entering into this contract we assumed plant costs of \$45 to \$50 per kilowatt; the costs as shown by us for 1924, for the entire year, average \$89.15 which is practically 100 per cent. increase.

Q462. Have you other contracts there that have worked out against your expectations like this one? A. I know of none.

Q463. Have your other contracts borne the full portion of the burden to pay operation expenses, depreciation, taxes, and a return on the capital? A. We know of no contracts that are not.

348 Q464. You must have some rates that are returning more than they should? A. We have.

Q465. You haven't determined which those are? A. No.

Q466. Why didn't you consider the probable effect of this World War? We had already entered into the war at the time you made this contract, had we not? A. It is impossible to estimate the

duration of the war and the amount of machinery which it would be necessary for us to install at the high prices. If the war were for a short duration we might be able to ride over without increasing our investment to any material extent.

Q467. Well, it wasn't an ideal time to enter into an obligation covering a period of twenty years with all the uncertainties involved, was it?

A. It has not appeared so by subsequent events, but many contracts were entered into at that time of this same nature.

Q468. How long a period did you take in negotiating this contract, how long was the matter under consideration between you and the Attleboro Company? A. I should say in the vicinity of a year and a half, that is just a rough guess.

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CQ469. Mr. Dodge: Your company solicited the contract, did it not? A. Yes, sir.

CQ470. And made up an elaborate report showing how it would be to the advantage of that company to take its current from your company? A. That is what we did.

CQ471. You knew that the Attleboro Company thereafter dismantled and removed their own generating plant in reliance on this contract? A. We knew that, yes, fortunately.

CQ472. Now, the prices of metals, copper and other metals had gone up tremendously by 1917, had they not? A. I should not say so; my recollection is they hadn't gone up tremendously at that time.

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Q473. Mr. Graustein: Mr. Dodge spoke of the surplus earned by the Narragansett Company over and above its dividends in 1923 and three months of 1924; that showing is based on the—including

the revenue from the Attleboro, not at the rate of 68 but at the increased rate of Attleboro paying its full share; is that correct? A. In 1923 it is; I am not sure of 1924.

Q474. Could you find out about '24? A. Yes; 1924 includes charges under schedule 101.

CQ475. Mr. Dodge: You mean you are publishing to your stockholders as the condition of your company sums which the Federal Court here has determined you are not entitled to; is that correct?—and parts of it you have refunded the Attleboro Company. A. Those have gone on the books as that.

CQ476. Do I understand that you have handed out reports showing as the income of your company the rates which you were trying to collect under 101? A. Yes; we put on our rates—on our books the amount we billed the Attleboro Company. It seems to me that is good accounting practice.

CQ477. Which proved to be rather illusory accounting practice? A. It seems to me to be correct.

CQ478. However that may be it increased your service by whatever the amount was you paid back to the Attleboro Company so far as the last six months of 1923 are concerned, affecting your returns on the average less than \$2000 a month during the entire 23 months; that is so, is it not? A. That is the amount that we repaid.

CQ479. You repaid about \$12,000 for the last six months of 1923, of your excess charge for the entire 27 months, so stated in the affidavit of your company to be about \$40,000, was it not—Mr. Graustein?

Mr. Graustein: You said it was forty-seven a while ago. A. No; it was either \$37,000 or about \$41,000, I remember that.

CQ480. Mr. Dodge: But considerably less than \$2000 a month; it was \$12,000 for the last six months of 1923, so that that didn't affect your surplus of \$265,000 so as to endanger it at all, during 1923? A. (No answer.)

Mr. Graustein: We are through.

Mr. Chairman Bliss: Have you completed your testimony?

Mr. Graustein: Yes.

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Mr. Chairman Bliss: It seems to me we ought to have a definite statement of the operation of your contract over that period of 1917 to 1922, inclusive.

Mr. Graustein: I would like to introduce such a statement to the Commission as soon as it can be prepared and give Mr. Dodge an opportunity to submit comments on it.

Mr. Chairman Bliss: I think we should also have as definitely as you can make it your reasons for and your estimate of the probable operation of this contract during the period of 1924; you have given it for 1924—we would like to know the whole effect of this thing.

Mr. Graustein: We can draw a paper showing the increase of the Attleboro Company in the past and project that into the future, and prepare figures that will show the result of the development, and we will be glad to prepare any other data which, either now or later, the Commission would like to have submitted.

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Mr. Chairman Bliss: I think we also should have a statement covering the period from 1917 on showing the total electricity generated and the total amount for each year that was supplied to the Attleboro Company.

Mr. Graustein: We will supply a complete statement showing the operation of the contract from the beginning to the end, showing the actual figures as far as we have gone and estimates for the future and submit that in a tabulated form so it will show at a glance the trend.

Mr. Chairman Bliss: There is another matter that I should like to have made a little clearer. What I want to get at is the question whether the Narragansett Company acted with due prudence and foresight in entering into this contract at the time that they did, having particular reference to the cost of the generating machinery and other items that go into the carrying on the work of generating and distributing electricity. I think we ought to have something which would show the cost of the various substantial things, the generators and transformers, things of that kind, as of the time that the company entered into the contract. If those increased costs have come about outside the range of ordinary judgment and foresight, why, it ought to be made clear in this matter. We can not take judicial notice of the fact that prices have gone up and prices have come to stay, unless we have something in the way of testimony before the Commission.

Mr. Graustein: We will assemble data of that kind and submit that data either at an adjourned hearing or in the form of an exhibit, if it is agreed and found practical to submit it in the form of an exhibit.

Mr. Chairman Bliss: I would suggest you prepare those in the form of an exhibit, supply counsel on the other side with a copy of it and then if it is desired to have witnesses come in here for cross examination the Commission will set a time at which that may be done. Those are the particular things that suggest themselves to me as matters that ought to come into this investigation.

NOON RECESS

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Francis J. Stanwood—Direct

AFTERNOON SESSION :

Mr. Chairman Bliss: The hearing will be in order.

FRANCIS J. STANWOOD

FRANCIS J. STANWOOD is called on behalf of the Attleboro Steam & Electric Company and, having been duly sworn, testifies as follows:

365 *Direct Examination by Mr. Dodge:*

Q1. You are a public accountant, Mr. Stanwood?

A. Yes, sir.

Q2. And have been for how long? A. Over ten years.

Q3. During that period what part of your time has been devoted to public utility accounting? A. The entire time on that phase of work.

Q4. And a considerable proportion electric power company accounting? A. Yes, sir.

Q5. What proportion of your time has been spent on that? A. Eighty per cent.

366 Q6. Have you, for several months past, been engaged in examining the books of the Narragansett Electric Lighting Company, and in making reports on various matters to the Attleboro Company? A. I have.

Q7. And have you been given full access to the books of the Narragansett Company? A. I have.

Q8. And have made tabulations from those books? A. I have.

Q9. Have you your reports here of which I have copies before me? A. Yes, sir.

Q10. I want to ask you just a few questions with regard to them. I want to ask you, in the first place, to give the surplus earnings of the Narragansett Company, as taken from their books, for each year beginning with 1919, after the payment of dividends, which seems to be schedule 2. A. As inspected we find these figures for 1919, \$41,429.81; 1920, \$25,404.42; 1921, \$37,592.70; 1922, \$85,224.72.

Q11. Now, if you will turn to your supplemental report and give me the figures for 1923 and for the first three months of 1924? A. For the year ending 1923, \$293,392.94; and for the three months ending March 31, 1924, \$248,969.02.

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Q12. Those were the last figures that were available to you? A. Yes, sir.

Q13. Did you also determine for us the surplus after reserve for dividends for the same three months of 1923? A. The surplus for the three months ending March 31, 1923?

Q14. Yes. A. \$248,672.57.

Q15. Exhibit 1 is a document that was furnished to us some ten days ago; I think you saw it, did you not? A. Yes, sir.

Q16. And you are familiar with the table called Generating plant data? A. Yes, sir.

Q17. And with the fact that for 1923 3600 was taken at our demand? A. Yes, sir.

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Q18. And for 1924, 3840? A. Yes, sir.

Q19. Do you know what, in apportioning these average unit costs, is taken by the Narragansett Company as the demand of the Atlantic Power Company? A. The last inspection we found the por-

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Francis J. Stanicood—Direct

tion assigned the Atlantic Power Company to be a fraction—15,500—over 55,000 apportioned.

Q20. It was 15,500 as the figure corresponding to the 36 or the 3840 for the Attleboro Company?

A. Yes, sir.

Q21. And the Atlantic Power Company is the company that supplies the New England Power?

A. I believe so.

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Q22. In apportioning the generating plant capital costs between the different companies in proportion to the maximum demand in kilowatts, what do you say as to the propriety of dismissing from consideration entirely the secondary current and the profit derived therefrom? A. I don't think I quite understand your question.

Q23. Do you think it should be disregarded in apportioning the capital costs of the generating plant? A. No; I do not think it should be disregarded, it should not be disregarded.

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Q24. Why is that? A. For the reason that a plant of this description having ability to sell a by-product, namely, the secondary power, should give the benefit of any profits, admitted profits by the sale thereof, towards the reduction of the capital asset, its capital asset as a valued plant. The Narragansett Company appeared to be, to have the ability to sell large blocks of secondary power which might be sold at a profit. These profits are devoted towards setting up other reserves than those which apply to the generating plant and not applied to further reserve on depreciation to retire the plant which created the sale.

Q25. Is there any other profitable business conducted from this generating plant which is taken

into consideration in apportioning the costs among different users where that cost is divided solely on the basis of demand for primary power? A. I don't think I quite get your question.

Q26. I say, is there any other profitable business which, like the business in secondary current, is produced by this generating plant and not taken into consideration for the apportioning the capital cost of that plant solely in accordance with primary current demand? Are there any other residuals of any kind that are sold? A. None to my knowledge.

Q27. So that the secondary current is the only other item that you think of which should be included in an apportionment of costs or taken into account in some way so far as the generating plant is concerned? A. Yes, sir.

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Q28. Now, with regard to the overheads which are listed in the last sheet of Exhibit 1, beginning with the item for salaries of general officers, directors' fees, and so on, have you any criticism to make of the way in which those items are apportioned in schedule 1? A. I believe there should be a credit given for the application of part of this overhead to the operation of the gas business which produces a gross income of some 120 odd thousand dollars per year, and also to that department of the Narragansett Company's business that has to do with the promotion of sales of appliances which is quite an undertaking and warrant some supervision from this department.

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Q29. What do you say as to the propriety or impropriety of apportioning these items in strict accordance with the total current sold where the

Attleboro Company is a single wholesale customer?

A. I should think it would be unfair on the kilowatt basis, for the reason that any wholesale purchaser should be charged with only that part of administration expenses as is warranted in putting the goods upon the shelf, so to speak. Attleboro buys goods from the stock room and these general expenses are those which result in running a business having upwards of 70,000 customers, and the Attleboro Company being one wholesale of the 70,000.

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Q30. Do you understand that electricity sold in that tabulation means the electricity as it leaves the generating plant or as it is metered in Attleboro? A. I mean purchasers at any point, measurement either at South Street or East Providence, or Attleboro.

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Q31. What is that in this particular column, electricity sold in K. W. H.? A. This appears to be—I am not familiar, but this appears to be the unit expense, unit cost per K. W. H. basis upon kilowatt hours sold which would be a lesser number than would be the case for kilowatt hours measured at the steam plant or the point of generating and delivery where that measurement is taken by deducting, to make this computation basis upon electricity sold would tend to increase the unit cost and would seem to operate unfairly in the Attleboro case.

Q32. Because the Attleboro Company under this proposed rate is to take the burden of leakage? A. Yes; it would appear that they are, and that the distribution losses are absorbed by dividing on electricity sold, which would appear to be the full

reading of all meters in the company's territory.

Q33. The ordinary consumer pays only for the electricity that his own meter shows? A. Yes.

Q34. Have you seen any of the readings of the company for any particular month as to the total electricity made and the total demand by the Atlantic Power Company? A. I made a note of the takings for the year 1922.

Q35. You told me of the month of September 1923. A. I remember offhand the month of September 1923 would be, the total generated 34,000,000 taken by the New England Power; 23,000,000 was taken by the Atlantic Power—23,000,000.

Q36. You haven't got it for the entire year for 1923? A. No, sir. 380

Q37. Now, have you some information bearing upon the propriety of taking 64,000 or thereabouts as the total peak load denominator of the fraction which is used in assessing upon the Attleboro Company its ratable share of these capital costs? A. I don't think I quite get your question.

Q38. Have you taken readings from the records of the company of the maximum of electricity generated at particular times—peak load, I think they call it? A. We made a study of the station logs at the Melrose station and found, repeatedly we found 85,000 to 90,000 kilowatt hours on the plant. The peak load periods were from eleven o'clock in the morning and 4.30 to 5 o'clock in the afternoon, and 8.30 to 9 at night. We found that the plant would carry and did, considerably in excess of 64,000 k. w. capacity. 381

Q39. That means as to whether it was fair to take 64,000 as the denominator of that fraction? A. I should consider it as unfair, and there should

be a higher demand—it would appear that a higher demand should attach to the so-called plant demand of the Narragansett Company.

Q40. Have you yourself, from the books, undertaken to figure whether or not in the year 1923 this old contract with Attleboro resulted in a loss or a gain? A. I have.

Q41. And what conclusion did you arrive at? A. We considered that for the year 1923, and we studied the condition at the end of six months thereof and reviewed again the situation after the close of the business, that there should have been a profit of \$5000 to the Narragansett Company, approximately \$5000.

Q42. Does that take into consideration the 8 per cent. return? A. Yes, sir.

Q43. As well as the actual cost? A. It does.

Q44. Apportioned as you think it should be apportioned? A. Yes, sir.

Q45. You were aware of the fact that in 1921, the latter part, throughout 1922 and 1923, electricity was billed to the Attleboro Company under rate No. 101 although it was paid by the Attleboro Company at that rate only during the time when the preliminary order of the court was in effect, namely, the last six months, did you know those facts, or didn't you have occasion to go into that? A. Yes; I think I am prepared to answer.

Q46. Can you tell us what the total, the extra billing, under the 101 rate was for the 47 months as compared with what it would have been under the contract? I am not sure whether you have a table showing that or not? A. I doubt if we have that.

Q47. I have here a figure stated in this affidavit filed in court at the time of the hearing on the preliminary injunction, perhaps we can use this figure. It is agreed that I may read this from the affidavit of the Narragansett Company filed in court. Such calculations as the Narragansett Company has made give a figure of \$165,986.19 as the charge which would have been made under the original rate for the same services which under schedule R. I. P. U. C. No. 101 was billed for \$205,606.71. That is a difference of a trifle under \$40,000.

Mr. Chairman Bliss: Covering what period?

Mr. Dodge: That covers, I believe, the first 27 months, from April 1, 1921, to July 1, 1923, I think—yes; these bills were for electricity delivered from April 1, 1921, to June 30, 1922, it says here—I think it should be '23—

Mr. Graustein: Yes.

Mr. Dodge: —both inclusive.

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Cross Examination by Mr. Graustein:

CQ48. Mr. Stanwood, you figured the cost to the Narragansett Company in 1923 under charge 68, and you came to the conclusion, if I understand your testimony, that the charge under 68 would have equalled the cost, provided a margin of about \$5,000? A. Yes.

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CQ49. Now, in that calculation did you use the same data that Mr. Gray used in Exhibit 1 and got a different arithmetical answer? A. No, sir: we used a lesser plant investment, a lesser perfect plant investment for the Attleboro's service charge.

CQ50. A lesser plant investment than what other figures? A. I think that is all, just in the plant investment.

CQ51. Now, you used a certain demand, what demand did you assume, was it 2000? A. 2,000, I think, was the demand we used.

CQ53. Now if, in fact, the demand of the Attleboro Company was 3600 your figures would be wrong, would they not? A. Yes, sir.

CQ54. If the demand, in fact, was 3600 kilowatts and not 2000 your figures would be wrong, would they not? A. Yes, sir.

389 CQ55. By a very big margin; your cost figure is based on a certain demand, is it not? A. The cost figure is.

CQ56. Because upon the basis of that demand you pro-rated the plant charges? A. Yes, sir; in assignment.

CQ57. And you assumed a demand of 2000? A. As I remember 2000 was the figure.

CQ58. If 3600 was the correct figure your results, of course, would be away different? A. Precisely.

CQ59. Have you any reason to think 3600 is not the correct figure? A. No; I believe that probably some other figure is true.

390 CQ60. Probably 2000 is wrong? A. Yes, I admit that I think 2000 is wrong. In the course of making the investigation we inquired of Mr. Gray of these various demands and we were given to understand that no instruments were installed at that time but some were ordered to place the demand on these various circuits.

CQ61. You have no reason to question the accuracy of the 3600 which has been testified to this morning? A. None whatever.

CQ62. I just want to ask you to confirm one or two facts; your study indicated that the generating plant of this Narragansett Company are very low, that is, the standard, their record stands among the best in the country—is that correct? A. Yes; that is a fact.

CQ63. In the figuring of the cost to the Narragansett Company of this surplus you not only assumed a certain demand on the part of Attleboro and a certain peak load on the Narragansett—what peak load did you assume? Did you take Mr. Gray's figures or did you add something to them? A. I think we corrected them for the peak load.

CQ64. In other words, something called secondary power you didn't include in peak, you took the primary power? A. Yes.

CQ65. I judge in doing that, in doing that, you were not sure the fact was right; did you feel sure you were right? A. No, as a matter of guessing, my inspection of their records as to their peak load and study of their log, not setting up one for myself.

CQ66. Of course, you would not feel that the company was justified in selling primary power to the absolute capacity of its plant without a provision for breakdown? A. Not at all.

CQ67. So that the actual output is not necessarily an indication of the peak load? A. Not at all.

CQ68. The peak primary load is the load the company is obliged to deliver in all contingencies? A. Not at all, we had that in mind.

CQ69. You had—you included, as primary power, power which the company was not under obligation to deliver under all circumstances? A. Certainly, yes.

Redirect Examination by Mr. Dodge:

Q70. And in view of the readings of the log which you have taken and which you have testified to have been \$85,000 to \$90,000, have you an opinion as to what should be taken as the peak load of the company for the purposes of that fraction that we have been speaking about? A. It all depends upon what the condition is now. If instruments are placed upon the various circuits and the experience of the company is that they can repeatedly carry, day in and day out, and month in and month out, 80,000, there should be some middle ground and some remuneration to those that pay the plant a return to provide for the profits accruing from sales, there should be some provision so that the profits accruing from those sales can be applied to reducing the plant investment by increasing the depreciation reserve; in other words, those who buy, take primary current and pay the 11 per cent. return on the plant and every dollar of the plant is in there, are not getting the same benefit by the by-product sale of this plant.

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Q71. That is practically a slightly different point from the one I was trying to direct your attention to. I understand you to say that you thought 64,000 was too low a figure to take as the peak primary load of the company; didn't you say that? A. Yes; I believe that is so in this instance.

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Q72. What figure do you think should be taken there? A. Nearer 75,000, between 75,000 and 80,000.

Mr. Dodge: That is all.

CQ73. Mr. Graustein: In regard to that question just answered, you added something to the 64,000 just on general principles, so to speak? A. Yes.

CQ74. Do you know that the company had two units out of commission a year or so ago? A. They had various sized units; they had a large one which has a 45,000 normal rating.

CQ75. They had that out? A. They had that out.

CQ76. When that was out the production was reduced? A. About 80,000.

CQ77. And that reduction would come first out of the secondary power; it did come first out of the secondary power? A. Yes.

CQ78. Is not that differentiating from primary work somewhat different to the Attleboro as to the month and a half? A. As I remember it the large unit was down when we saw the log and there was over 70,000 on the clock. I believe that is correct. I am speaking from memory now. I believe it is 70,000 on the log at 11 o'clock on one of the mornings when the 45,000 turbine was out.

CQ79. That would not justify, however well, them guessing of 75,000 or 80,000 primary load, would it? A. I don't see but what it would; I don't see any difference. It is just a matter of opinion. I don't know of any other condition to go by.

CQ80. Would you consider it good service for the company to sell primary power and then be unable to deliver it? A. No, sir; not a minute.

CQ81. Then you do not think the Narragansett wrought up this primary load from 64,000 to some higher figure, they would be doing it at some expense and giving it a conservative service? A. I don't think I can answer.

CQ82. Of course, the company wants load capacity and taking risks of breakdown, and putting in—putting a bigger load on? A. On account of so many secondary contracts and the plant seemed to have the experience, we went upon the experience of the plant in creating an impression that it could, as a matter of capability do a thing, and we found it governed in the history of the Attleboro contract for never have they been cut off except when the plant was down entirely,—when the Narragansett plant was down entirely, and we found by experience that they could carry a substantial part of the secondary load and we guided our results by what we found to be their experience.

CQ83. Is this true, that the only fair thing to consider on the part of electricity is the electricity which the company agrees to deliver and which it reasonably expects to deliver? A. That is.

CQ84. You did not get 64,000 which the company was not under obligation to deliver? A. That is correct in this instance, we took that, yes.

CQ85. If Mr. Gray told you that they had been only able to deliver 65,000 kilowatts when these two units were out would you feel that your recollection should be set against his statement? A. Well, I should not want to dispute it, certainly.

Mr. Graustein: That is all.

Q86. Mr. Dodge: Did you figure the comparative sums that would be paid by the Attleboro Company under the original rate No. 68 and under the proposed rate No. 125, in 1923 and 1924, took into consideration the actual demand? A. You will have to help me.

Q87. On your supplementary report which I have here—turn to the next to the last page; you see that page headed “Comparative costs Attleboro Steam & Electric Company” under the original contract No. 68 and proposed contract No. 125? A. Yes.

Q88. Now, so far as the year 1923 is concerned, are those two figures based upon the actual demand of the Attleboro Company or upon the assumed 2,000? A. 2,000 for '22 and 3,840 for '23.

Q89. 3,840 or 3,600? A. 3,840.

Q90. You took 1923 as 240 higher relation? A. Yes—I don't understand you—I took it or we worked it on the supplementary on the 3,840.

Q91. And the same for 1924? A. And the same for 1924. 404

Q92. You figured that the 1924 proposed new rate would cost the Attleboro Company and yield to the Narragansett Company how much in excess of contract No. 68? A. About \$37,000.

Q93. And how much in 1923? A. \$11,000.

Q94. Why is there that great discrepancy? A. I do not appear to be able to answer that right here.

Q95. You assumed some 10,000,000 kilowatt hours in 1923 and estimated 12,000,000 in 1924? A. Well, that as I remember we used the same demand, 3,840 for both '23 and '24; there appeared to be a big difference.

Q96. Did you use the same coal cost under the old contract? A. Yes; the same coal cost is used for '23 and '24, coal based at \$6.50. 405

THOMAS C. FALES

THOMAS C. FALES is called in behalf of the Attleboro Steam & Electric Company and, having been duly sworn, testifies as follows:

Direct Examination by Mr. Dodge:

Q1. Mr. Fales, what office do you hold in the Attleboro Steam & Electric Company? A. President.

Q2. And have been president for some years? A. yes, sir.

Q3. Were you a party to the negotiations of this
407 contract of 1917? A. Yes, sir.

Mr. Dodge: Do you (Mr. Gray) agree that the contract was solicited by the Narragansett Company?

Mr. Gray: Yes, sir.

Q4. Mr. Dodge: Where was the contract actually made and signed by the parties? A. My recollection is that it was signed in Boston.

Q5. Did you have any conversation with the representatives of the company, the Narragansett Company, and, if so, with whom, as to whether or not it was expected by them at that time that this contract would yield any profit during the first half
408 of the twenty-year term? A. We had that conversation with Mr. Gray and Mr. Lisle. They generally agreed that the contract would not be fully profitable during the first ten years.

Q6. Did Mr. Gray and Mr. Lisle say so? A. Yes, sir.

Q7. They expected to make a profit in the last part? A. To make up for the loss in the first part.

Q8. Why was it anticipated, if nothing was said on the subject, that the contract should be more profitable in the last half than the first half? A. A contract running over twenty years—it was felt it was rather a long time to wait for the real favorable price of our own, but the talk was commonly—you wanted your cakes and ales during the first part of the contract, and then it was arranged that the price was made accordingly, and that they fully expected to make up in the last ten years of the contract any loss they might make in the first.

Q9. Owing to the increased demand? A. Yes, sir.

Q10. I think it was anticipated that the demand would raise as high as 20,000,000? A. That was all forecast in the report made by the Narragansett Company; I can not give you the exact figures but I think that is approximate. 410

Q11. Did you in 1921 when that proposed new rate was under discussion have any conversation with Mr. Gray with reference to whether or not your contract up to that time had yielded no margin above the actual cost? A. It was stated to us that possibly there was a profit of 2 or 3 per cent. on the investment, not a full 8 per cent. return.

Q12. Was it claimed to you at that time that the contract hadn't yielded enough to pay the cost? A. No, sir; it was stated that there was a small return on the capital invested. 411

Q13. But less than 8 per cent.? A. But less than 8 per cent.

Q14. Now, from the time in 1921 when the Narragansett Company undertook to put into effect

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Thomas C. Fales—Direct

rate 101 you were billed at a higher price? A. From April, 1921, we were billed at a higher price; yes, sir.

Q15. And you continued down to July 1, 1922, to pay at the old rate, but to set aside in the bank the difference between the two? A. We paid nothing up to July 1st.

Q16. Well, there was a controversy over the validity of the new rate that was pending? A. We set up a reserve.

Q17. You set aside in the bank the total amount billed to you under the rate 101? A. Yes, sir.

413 Q18. Then, after the suit was brought, from July 1, 1923, an order was made by the Court that you should pay at the new rate and should get a refund if the new rate should turn out to be invalid? A. That is true.

Q19. I think we did pay the new rate then for six months? A. Yes, sir.

Q20. And then got a refund bringing your payments down to the contract No. 68 rate? A. That is true.

414 Q21. I want to ask you what the amount of the difference between the two rates was for those six months, that is, the amount of the refund that came to you under the final decree of the Court? A. My impression is that it was between (about) \$12,000 including interest, I am not sure about that.

Q22. \$12,000 including interest, a comparatively short period? A. Yes.

Q23. You are connected with other electric companies besides this? A. No other electric companies; two gas companies.

Cross Examination by Mr. Graustein:

CQ24. You agree, I take it, that the installation of plant capacity today is much more capacity (costly) than it was in 1917? A. Yes.

CQ25. In view of that do you think that the Narragansett Company could realize its expectation of making a profit on this contract? A. I think it is quite possible to make a forecast now. As it was at that time there is no reason to believe that if Mr. Gray could not make it seven years ahead, or seven years ago, it is doubtful whether he can make one seven years from now.

CQ26. The profit which Mr. Gray expected to see 416
in the next ten years was due to the increase in demand? A. That is what I understood.

CQ27. If that increase in demand—of course, that would require an additional plant capacity, if that plant capacity continued to cost anything like the present rates, instead of the contract improving as years went on it would result in the second ten years being worse than the first? A. If the plant cost continued to increase; yes, sir.

CQ28. Or if they stood at ordinary—— A. If the plant costs decreased, why, then, of course, there might be a profit to the Narragansett.

CQ29. With the plant costs at the present level the Narragansett faces an increase in loss rather 417
than a decrease in loss? A. Yes.

CQ30. Your charges in Attleboro are based—they are not on schedule 68 but on the cost of power to you fixed at cost to Narragansett on 101 or 125? A. Until this case is settled we have to set up our books on 101.

CQ31. You make your charges on that basis and you are paying the excess in the bank? A. Yes, sir.

Redirect Examination by Mr. Dodge:

Q32. With reference to the date of the contract, perhaps you can tell us whether the connection between the Narragansett Company and the New England Power Company antedated the contract, or came entirely after that? A. My impression is, I think not fully; a larger part of the New England came after our contract. Possibly they may have had some connection before.

Q33. Mr. Chairman Bliss: In this new rate which is now under investigation the charges to you are based upon the \$19 unit cost? A. Yes, sir.

Q34. And a rate of 8 mills? A. As I recollect it.

Q35. What is it under the existing contract? Is it possible to make a comparison between those figures? A. There was no demand on the old contract; it was simply 8 mills—57/100 mill increased or decreased by the price of coal, the only variation was price of coal and taxes.

Q36. The difference in the new rate is charging you at the rate of \$19 for a demand of 3,840, as they estimated? A. Yes; there are substantial other differences too. The difference—under the old rate electricity was delivered at our switchboard; we stood no line losses at all. We were paid a return on the cost of the line; we were paid additional charges for station labor which we would not have to incur if it was not for this contract. Now current is being delivered to us at an entirely different point from the old contract called for.

Q37. What percentage of current loss do you estimate there is by reason of the measurement of

this electricity at the East Providence substation?

A. Ten to 12 per cent.

Q38. Is that the estimate of the Narragansett Company? A. I think that is the difference shown by the readings between the East Providence and the Attleboro stations.

Q39. Are there any other differences besides those you have mentioned? A. Those are the essential features.

Q40. Then, if I understand you correctly, under the present contract electricity is measured at a station near Attleboro? A. In Attleboro on our side transformers; we accept no loss under the present contract.

422

Mr. Dodge: I should like to see, as having some bearing on the rate which you charge against us, the contract between the Narragansett Company and the Atlantic Power Company.

Mr. Graustein: It is on file with the Commission.

Mr. Chairman Bliss: Copies are on file with the Commission.

Mr. Dodge: Perhaps it will be agreed that 15,500 is the primary demand figured in that contract.

Mr. Graustein: Mr. Gray says 15,500 is it.

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Mr. Dodge: That concludes our evidence unless we have to file something in writing with reference to Exhibit 2, which we didn't see until this morning, or unless some of the further figures which they have to file suggests something.

Mr. Graustein: I want to put in, by Mr. Gray, one thing on the question of the amount of the peak load when the two units were out.

JESSE E. GRAY is recalled by Mr. Graustein :

Q481. You heard the testimony in regard to the time two of the units were out about a year or so ago? A. Yes, sir.

Q482. What was the peak load of the company's plant at that period? A. We were able to carry during the daytime, with our 45,000 and the 20,000 down, and operating part of the 45,000 as a synchronous condenser, 55,000 to 57,000, that was day after day.

Q483. That was stretching yourselves? A. That was doing all we could to show that we were running the 45,000 as a synchronous condenser.

Q484. Are you able to tell now the primary demand of the Atlantic Power Company? A. Approximately 19,800.

Q485. 19,800 kilowatts is their primary demand today? A. Approximately.

CQ486. Mr. Dodge: How long were the two units out of commission? A. Quite an extended period, several weeks.

CQ487. That was due to what? A. That was due to field trouble; part of the machines had to be sent back to the factory to be repaired.

CQ488. That is the only time in the history of your company that two units broke down at the same time? A. No, sir.

CQ489. When was the last time? A. I can not give you the dates without looking over the record.

CQ490. When was this particular time? A. This was last summer, the summer of 1923.

CQ491. When in the summer? A. I can't give you the date.

CQ492. Have you a reference to them here? A. No; I haven't the dates here.

CQ493. Was there not a time that Mr. Stanwood was there when one of the units was temporarily out of commission? A. Yes, there was a time that there was one out, but the time there was two out, I am talking about the time when two were out, the 45 and the 20.

CQ494. I suppose something might happen to incapacitate you to a greater extent than that? A. Why, sure.

CQ495. But you obviously have to contract, do contract in the exercise of reasonable business judgment, for the amount you can deliver if an extraordinary accident should incapacitate temporarily a large part of your plant? A. Yes; but we don't contract for more than we can deliver under the ordinary operative conditions which assume at least the largest turbine out of commission. 428

CQ496. But you don't assume two would be out of commission at the same time? A. That is a small—one of the possibilities.

CQ497. What is the overhead capacity of the station? A. I don't know what you mean by overhead capacity of the station.

CQ498. I suppose it means the maximum amount that you can deliver when you haven't got any breakdowns? A. If you mean what is the amount that we have been able to carry on our station—we carry 86,000. 429

CQ499. Can't you go higher than that? A. I don't believe so—oh! may be for a temporary period, fifteen minutes or an hour, something of that kind we might carry a load in excess of 86,000.

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Jesse E. Gray—Rebuttal—Redirect

Mr. Dodge: That is all.

Q500. Mr. Chairman Bliss: Mr. Stanwood testified that your log showed that 95,000, I think he said—— A. I believe Mr. Stanwood is in error, I believe that he is in error.

Q501. Your best knowledge there, and you have access to those records, is 86,000? A. 86,000 is about the maximum that we can carry on our station.

Mr. Stanwood: Did carry?

Mr. Gray: Did or can.

431

Q502. Mr. Chairman Bliss: You spoke this morning about certain contracts you had with the City of Providence and with the East Providence Water Company, and some other similar contracts; those are based upon using electricity at off-peak hours, and that you have a capacity to supply it? A. Yes; they are not required to use electricity over the peak without request.

Q503. There is no such provision with reference to the Attleboro Company? A. No, sir.

Q504. They are entitled to a supply of electricity at any and all times? A. Yes, sir.

Q505. And you have to be prepared to furnish it as you would to a manufacturing plant? A. Yes, sir.

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Q506. You have heard Mr. Fales testify as to the difference between this new rate and the old so far as it affects his company in that the rate of \$19 is based upon the primary peak, primary load of his company estimated at 3,840; that is the new charge, is it not, under this rate? A. Yes, sir.

Q507. It didn't exist in the other rate? A. No; that is a different form from the previous rate.

Q508. The rate of 8 mills is based upon the same provision as in the contract? A. That is based upon the actual production cost of electricity which would be delivered as measured at the State Line.

Q509. Is that the same amount as obtained in the contract that was made and the rate in schedule 68? A. No, sir; in 68 was the one charge rate and the price per kilowatt hour specified in that rate covering investment as well as operating costs. In the new rate the charge in two parts, one would cover investment and the other to cover operating costs.

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Q510. The other difference that he stated, namely, loss due to loss of electricity by reason of the measure being made at the East Providence substation; you agree to it, do you not? A. Yes; his statements made are all true that under the old contract the electricity was measured with a meter located in Attleboro and rentals were paid by the Narragansett Company on two transmission lines, that is, on a transmission line owned by two companies—a certain allowance was made for substation operation.

Q511. Under these other contracts you have that we have spoken of—are those based on a flat rate same as the Attleboro contract? A. The Atlantic Company contract is not; the charges under that contract consist of two parts, an investment charge based on a valuation of that part of the plant properly chargeable the Atlantic Company and a kilowatt hour charge based upon the cost of generating electricity. In that particular case the contract is what is known as an ordinary—known as cost-plus

435

contracts. The price varies each month dependent upon the cost for that particular month.

Q512. Have you any other contracts that are made upon the same basis as this Attleboro contract? A. No, sir.

Q513. Did you have any others—at the time you entered into the Attleboro contract? A. No, sir.

Q514. How did you come to make this on the basis of a flat rate? A. I believe that was the type of contract that was desired by the Attleboro Company although I am not sure of that statement.

Q515. You are not going to do it again, are you?
437 A. No, sir.

CQ516. Mr. Dodge: That price named in the contract of 1917 was designed to cover all of the items which your rate 125 is designed to cover?
A. It was designed to, yes.

CQ517. And this item which you are entering here of \$19 per kilowatt in demand was supposed to be covered in your flat rate named in the old contract? A. We hoped that it was, yes.

CQ518. And you expected that during the first part of the contract period there would not be a profit from it but that there would be an extra profit in the later years of the contract? A. I would not say that it was anticipated that there
438 would not be a full return during the earlier years and that there would be more than a full return during the later years but during the entire period it would equal a full return.

CQ519. And if I understood your testimony this morning and in regard to 1923 and the estimate for 1924, even assuming that all your elements of ap-

portionment are properly figured the contract came very near—the old contract came very near to paying its way if you took out the 8 per cent. return, that is, I think, your difference? A. Approximately between \$4000 and \$6000.

CQ520. Which is a small percentage of the total amount involved; so that that contract has not operated very differently from what you figured? A. I should say so; I should say that it had when it shows a loss of \$50,000 in one year and which loss we estimate will be greatly increased.

CQ521. I see you have your old habit of arguing your case; I am speaking about not loss of the full 8 per cent. which you didn't anticipate during the first years of the contract? A. Yes; but I stated that we did anticipate some return. 440

CQ522. But not what all your \$50,000 would yield to you? A. Not the full 8 per cent.

CQ523. Now, as a matter of fact, both you and your associates told Mr. Fales and Mr. Goldthwait when you made this contract that you didn't expect to make any profit during the first part of the contract period? A. No, sir.

CQ524. Would you say you didn't say that? A. Yes, sir.

CQ525. That is one point you criticize of Mr. Fales' testimony? A. Yes, sir; if Mr. Fales testified that we didn't expect to make any return in the first ten years. 441

Mr. Chairman Bliss: I think Mr. Fales testified that he didn't feel sure, 2 or 3 per cent. I made this note; he said it was agreed by Mr. Gray and Mr. Lisle that the contract would not be fully profitable at the first half of the

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Jesse E. Gray—Rebuttal—Redirect

period but it would be made up by increased demand in the latter half.

Mr. Dodge: How is that, Mr. Fales?

Mr. Fales: It is as the Chairman stated; they didn't expect to make a full profit but a small profit on the first half of the contract, which would be made up in the latter part.

Q526. Mr. Chairman Bliss: Mr. Gray, if this had continued at the rate unit cost of \$45 how would your contract have worked out in view of other conditions that have arisen? A. I think we would be all right.

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Q527. You don't think you would be here? A. No, sir; if the plant cost had remained at that level.

Q528. Up to that time what had been—up to the time you entered into the contract what had been the development of unit cost of your plant? A. They had been downward, and that was the experience throughout the country.

Q529. During the period of, say, three years or five years before 1917 do you recollect what the unit costs were? A. I recollect that there was a gradual tendency downward of unit cost of all steam generating stations.

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Q530. Under this contract you entered into you had the benefit of any advance or any cheaper methods of producing electricity, did you not? A. Half of it.

Q531. Part of the benefit went to the Attleboro? A. Went to the Attleboro Company.

Q532. Have there been any such benefits accrue? A. No substantial ones.

Q533. I supposed you advised—you were one of the advisors of your company, were you not, in reference to the preparation and entering into this contract? A. Yes, sir.

Q534. And you feel that the increased unit cost there and the permanent increase in those unit costs were things which you could not foresee in connection with this contract? A. Yes, sir.

Q535. Do you think they could have been foreseen by the exercise of reasonable judgment? A. They were not foreseen by contracting parties all over the United States.

Q536. Do you know of any contracts similar to this that were negotiated by utilities companies in this neighborhood at that time? A. I know that throughout the United States there has been a very general and extensive increase in rates due to the war conditions. That has been almost universal in every State in the United States for several years, starting in about 1918. 446

Q537. Now, under your original contract it was your understanding, was it not, that in the first half of that contract, the earlier years of it, you would get the smallest percentage of return? A. We would make less per average return, we would make more during the later years of the contract. That was not to be very large because your price again would be your better utilization of your transmissions lines and possibly some advantage in generating costs. 447

Q538. Under the provisions of the rate schedule 101, and again under the provisions of rate schedule 125, you propose to make that return immediately? A. Yes, sir.

Q539. Bring your rate to a full return and to maintain it so during the remaining period of the contract? A. I believe that is the proper way.

Q540. Would not that leave you in a position where you will be far better off than you would have been if your original contract worked out according to your anticipation? A. No; it was a worse position because of the loss that has already gone by. We haven't contemplated making up. The rate we are now filing does not contemplate making up any past losses which are admitted by everyone. We are endeavoring to make ourselves whole from now on so that we will be even—if the original contract had worked as anticipated.

Q541. At the termination of this contract period do you propose to depreciate the value of that transmission line during the period of the contract is in existence? A. No; that would not be fully depreciated, if it were we would have to give more than the depreciated rate that we have allowed.

Q542. What rate have you allowed? A. Three per cent.

Q543. Over a period of twenty years? A. Yes.

Mr. Graustein: It is 3 per cent. on the depreciated value not 3 per cent. on the original?

A. Three per cent. on the depreciated value.

Q545. Mr Chairman Bliss: You deduct the depreciation each year and then apply the standards to the remainder? A. Yes, sir.

Q546. Mr. Graustein: Mr. Gray, as I understand, under the original 68 rate the charge is wholly for a kilowatt hour; that charge today with

an adjustment, that charge would be somewhere between 10 or 11 mills. This schedule substitutes two charges, one of 8 mills and the other \$19 kilowatt demand; is that correct? A. Yes, sir.

Q547. One other thing; the new rate is based entirely on costs? A. Yes, sir.

Q548. In that respect it is identical in principle with the rate charged to the Atlantic Power Company? A. Yes, sir.

Q549. And it is identical in all its applications with the exception of the difference between one mill and .65 of a mill? A. Yes, sir.

CQ550. Mr. Dodge: How long has the demand been stated at that figure, at 19,000, in estimating the Atlantic Company's apportionment of the generating plant? A. Just the last month. 452

CQ551. What was it before that? A. Slightly less than that.

CQ552. It has always been less than that, has it not? A. It never goes down after arising at the highest point; it moves up constantly but it never recedes during the period of the contract.

CQ553. What was it, six months ago? A. 15,500 I think is the exact figure.

CQ554. In connection with the other paper which you are going to turn in, will you turn in a table showing the record as given by your log of the maximum output? I think you have those figures. A. For what period do you mean? 453

CQ555. I thought you only had the log for a few months. A. Oh! no; we make a log sheet each day which gives the load every fifteen minutes for that day. I can give you that for any period for a great many years past.

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CQ556. Give us the maximum for each month for 1923? A. The maximum peak at any time during the day?

CQ557. Yes; for each month for 1922. A. (No answer.)

Adjourned

Providence, R. I., June 16, 1924.

Met pursuant to adjournment.

455 Present:

Mr. Commissioner BLISS, Chairman.

Mr. Commissioner RODMAN.

Counsel present as before.

456 Mr. Chairman Bliss: This matter was continued from a week ago for the presentation of additional exhibits and for argument in case no further testimony was to be presented. There was filed with the Commission certain exhibits and I assume they have been supplied to counsel for the Attleboro Steam & Electric Company—three certain exhibits, one entitled

Peak loads carried by station and turbine out of commission due to accident—that may be marked "Exhibit No. 8."

A second exhibit, Highest peak load in each month—that also was furnished you?

Jesse E. Gray—Direct

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Mr. Dodge: I think so.

Mr. Chairman Bliss: —covering the period from January 8, 1923, to May 20, 1924; this may be marked "Exhibit 9."

And a further statement entitled, Loss to the Narragansett Company under Schedule 68, consisting of some 27 sheets of statements and tabulations; that may be marked as "Exhibit 10."

I think those exhibits should be verified by the witness who prepared them and also to give an opportunity for such cross examination as may be desired.

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JESSE E. GRAY is recalled by Mr. Graustein:

Q558. Mr. Gray, Exhibits Nos. 8, 9 and 10, entitled Peak load carried by station with turbines out of commission due to accident—Highest peak load in each month—and Loss to Narragansett Company under Schedule 68, were prepared under your directions? A. Yes, sir.

Q559. Are the statements, purporting to be statements of fact, contained in those three exhibits correct? A. They are.

Q560. And are the estimates contained in Exhibit No. 10 correctly figured? A. They are.

Q561. Are the investments of costs shown for the years 1918 to 1923, inclusive, based on actual cost since 1914 and appraisal as of that date? A. Yes, sir. 459

Q562. Are those values which are given in Exhibit 10, are they based on actual costs since 1914 and appraisal in 1914—are those your book figures? A. Those are the book figures.

Q563. How do those book figures compare in the aggregate with replacements costs less depreciation?

A. In the aggregate they would be less.

Q564. How do they compare with the money actually invested in the properties? A. These would correspond with the money actually invested.

Q565. They correspond very closely? A. Yes.

Q566. That is but a variation of, perhaps, not more than 5 per cent? A. Less than 5 per cent.

Mr. Graustein: The Commission suggested the submission of one exhibit which is not included in those which the Chairman enumerated and which I assume therefore has not been filed—that was an exhibit indicating the trend of construction costs in generating stations over a period of years, and I should like if it is not objected to to introduce as exhibits some charts which I believe Mr. Dodge has seen, perhaps not quite recently. We were delayed in getting those.

Mr. Chairman Bliss: They may be presented if they can be presented through a witness.

Mr. Dodge: There was also the General Electric chart.

Q567. Mr. Graustein: I understand some charts have already been filed with the Commission? A. No, they have not been filed.

Q568. Since the last hearing, Mr. Gray, have you communicated with the General Electric Company? A. Yes, sir.

Q569. Requesting from them information? A. Yes, sir.

Q570. In regard to the trend of costs for various types of electrical machinery? A. Yes, sir.

Q571. Have they furnished you with information of that character? A. They have.

Q572. I will hand you a sheet entitled Transformers for synchronous convertors showing a draft indicating prices from 1914 to 1923, inclusive, was that sheet furnished you by the General Electric Company? A. It was.

Mr. Graustein: May I introduce that as an exhibit?

Mr. Chairman Bliss: I understand that is applicable to the particular apparatus there.

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Mr. Graustein: Yes, Mr. Chairman, and we have similar drafts which I propose to introduce showing similar trends in the case of various other types of apparatus.

Mr. Chairman Bliss: Have you any way of indicating the general trend of all the electrical apparatus?

Mr. Graustein: I have an article in the Electrical World containing a great many—fifteen drafts—showing not only electrical apparatus but bricks and labor, boilers and so on—all the items.

Mr. Chairman Bliss: Perhaps you had better introduce the particular exhibits you have and then we will consider that.

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Mr. Graustein: If we had been able to get the information more rapidly we should have assembled it but this was the best Mr. Gray was able to do in the time available. Then this may be introduced, if I understand you correctly?

Mr. Chairman Bliss: Do you want to introduce that as a separate exhibit? They are attached together.

Mr. Graustein: Perhaps I will attach them together as "Exhibit 11."

Mr. Dodge: The first you spoke of was general construction costs?

Mr. Graustein: No; synchronous convertors.

Mr. Dodge: You had one you said represented general construction costs.

Mr. Graustein: That is this (indicates).

Mr. Dodge: I haven't seen that.

Mr. Chairman Bliss: Sheet 1, Exhibit 11, would be Trend of synchronous convertors; and sheet 2—

Mr. Graustein: Sheet 1 is really Motor generator sets; I didn't have them in the order of their numbering.

Q573. Is that a sheet furnished you by the General Electric Company? A. It is.

Q574. And that is sheet 1 of Exhibit 11; have you sheet 2? Sheet 3 is Transformers with synchronous convertors which has already been put in evidence. Sheet 4 entitled Curtis steam turbine with exciters; is that sheet furnished by the General Electric Company? A. Yes.

Q575. Sheet 5 is Railroad switchboards; is that sheet one which was furnished you by the General Electric Company? A. It is.

Q576. Sheet 13 is Alternating current generators; was that furnished you by the General Electric Company? A. It was.

Q577. Sheet 14 is Direct current generators; was that also furnished by the General Electric Company? A. It was.

Q578. Have you any other sheets of that character furnished you by the General Electric Company? A. No, sir.

Mr. Graustein: Then, Mr. Chairman, I offer sheets 1, 3, 4, 5, 13 and 14, indicating costs of various types of electrical apparatus from 1911 to 1923 furnished by the General Electric Company.

Mr. Chairman Bliss: Those may be marked "Exhibit No. 11."

Mr. Graustein: If the Commission is willing to accept a copy of the *Electrical World*, issue of April 14, 1923, an article therein by William H. Handy, consulting engineer of Baltimore, Maryland, containing various drafts showing costs of electrical construction, I should like to submit that for what value the Commission may find in it.

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Mr. Chairman Bliss: Of course, we have power under the statute to accept testimony of that kind where it is helpful. I do not know whether there is any dispute about the general trend.

Mr. Dodge: It looked all right to me, Mr. Chairman, that is, the curves may be substantially like the others.

Mr. Chairman Bliss: Well, it may be introduced in the absence of specific objection to it. It does not have a direct bearing upon this proceeding but indirectly it affects the general proposition.

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Mr. Graustein: The page is 859.

Mr. Chairman Bliss: It may be marked "Exhibit 12."

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Jesse E. Gray—Cross

Q579. Mr. Graustein: Mr. Gray, I hand you a sheet marked, entitled Narragansett investment measured by its securities; in regard to that I want to ask you this—can you tell me the amount of the Narragansett investment in plants which is attributed as to December 31, 1923, to service to the Attleboro Company? A. \$466,603.

Q580. Can you tell me the percentage that is of the total investment in plants of the Narragansett Company? A. 2.8 per cent.

Mr. Graustein: I think of no more questions.

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Mr. Chairman Bliss: Do you want to present that sheet in evidence?

Mr. Graustein: Not for the moment; I would like to present that through Mr. Hall.

Mr. Chairman Bliss: Any questions, Mr. Dodge?

CQ581. Mr. Dodge: Mr. Gray, in the bills which your company rendered to the Attleboro Company under the rate of 101, while that was claimed by your company to be effective, the peak primary load of your plant was in every case figured at 60,000, was it not? A. Yes, sir.

CQ582. And you have already testified that the Attleboro demand was figured at 2,000? A. Yes, sir.

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CQ583. So that in all those bills you were apportioning to Attleboro, so far as the generating plant capital costs are concerned, 1/30 of that? A. Yes, sir.

CQ584. Now, in your new exhibits which you have produced here and on which your new proposed rate 125 is based, you have charged interest

in various places at 6 or 7 per cent., have you not?

A. Not that I know of.

CQ585. Do you know what the average rate of interest actually paid by your company in 1923 was? A. No.

CQ586. It was less than 6 per cent., was it not borrowed money? A. I couldn't testify to that.

CQ587. You have no knowledge of it at all? A. No, sir.

CQ588. You have charged it to your costs here, have you not, in computing the new rate, an item of interest on fuel on hand? A. Yes, sir.

CQ589. At 7 per cent.? A. I believe so, 7 per cent.

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CQ590. You have charged interest on your own payments on invoices in advance, have you not? A. Yes, sir.

CQ591. Without crediting any discount which you may have obtained from money payment in advance? A. I couldn't testify as to that.

CQ592. You have charged in the whole construction costs interest at a definite rate regardless of what the company paid, haven't you? A. I couldn't testify as to that.

CQ593. Don't you know that you have charged in interest at 6 per cent. as whole construction, and part of construction? A. I know interest on construction has been charged but I couldn't testify as to the rate.

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CQ594. You didn't make that up yourself? A. No, sir.

CQ595. You did, yourself, figure interest on fuel stock on hand at 7 per cent.? A. I know that was figured at 7 per cent.

CQ596. Now, under the original contract of 1917 and as a part of the inducement to the Attleboro Company to make it, your company built the transmission line to the State Line and made no charge to the Attleboro Company in respect to that? A. No, sir.

CQ597. In addition you paid the Attleboro Company a certain percentage of the cost on the line which it built from the State Line in Massachusetts? A. We built the entire line and sold a certain section of it to the Attleboro Company and to the Seekonk Company.

479 CQ598. And those were sections in Massachusetts? A. In Massachusetts; yes, sir.

CQ599. And you allowed an annual return to the Attleboro Company on the amount which it paid you for its part of the transmission line? A. Yes, sir.

CQ600. Now, under rate 101 when you billed to the Attleboro Company you, for the first time, included a return upon the transmission line in Rhode Island and figured in the cost of that at \$53,000; do you remember that? A. The return was supposed to be there all the time. We figured it as a separate item after Schedule 101 went into effect.

480 CQ601. That is, you estimated when you made the original contract that you were going to get enough back to reimburse you for the line in Rhode Island? A. Yes, that is the rental charge in—would have been in the rate itself.

CQ602. Now, when it came to rate 101 of 1921 you then charged your transmission in Rhode Island at \$53,000; do you remember that? A. No, I don't remember the figure.

Jesse E. Gray—Cross

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CQ603. You know that you have in your new rate of 125, in figuring that you have put in that transmission line at \$73,000? A. Yes, sir.

CQ604. And that was increased over what you had been billing it to us at under rate 101? A. It might have been.

Mr. Chairman Bliss: Let me get clear what part of the transmission line you mean.

CQ605. Is it not the Narragansett transmission line in Rhode Island from your East Providence substation to the Massachusetts-Rhode Island line?

A. We constructed a transmission extending from our substation to the vicinity of the plant of the Attleboro Company, we acted as a contractor. That part which laid in Attleboro was sold to the Attleboro Company; that part in the territory of the Seekonk Company, to the Seekonk Company.

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Q606. You mean in the town of Seekonk, State of Massachusetts? A. Yes, sir; the part in Rhode Island was retained by the Narragansett Company.

Q607. Now, when you speak of \$73,000, what portion of the line do you refer to? A. That is the part which lies wholly in Rhode Island.

Q608. It does not include any of the investment in Seekonk in the State of Massachusetts? A. Might I explain that more fully? Under the contract with the Attleboro Company the Narragansett Company agreed to build a line for, I believe, \$4,500 a mile. Considerable time elapsed before the line was actually built and its cost had increased so that the cost of the line per mile was more than the \$4,500 to be termed as the selling price—the \$70,000 odd dollars. The cost of that part of the

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line in Rhode Island is the balance of the total cost after deducting the payments received from the Attleboro Company and the Seekonk Electric Company.

CQ609. Mr. Dodge: So that it is in effect recouping the Narragansett Company for part of the loss which it had suffered on the sale price of the line in Massachusetts, which price was agreed upon at the time; it actually cost you more than you sold it to Attleboro for, and so in your proposed new rate you make up that loss? A. I suppose that would be one way of expressing it.

CQ610. Now, you didn't do that under rate 101; there you charged in the transmission line at \$53,000 instead of \$73,000, didn't you? A. I don't recollect.

CQ611. You know it was less than \$73,000? A. Why, I imagine so.

Mr. Dodge: I think that is all.

Q. Mr. Chairman Bliss: I want to get this clear if I can. Who put the investment into the Seekonk Electric Company from the State line to the point where the Attleboro Steam & Electric Company line take the current? A. The Narragansett Company built that line.

Q612. They own it now? A. No; they sold to the Seekonk Company, Seekonk Electric Company at \$4,500 a mile.

Q613. You say the line in Rhode Island is \$73,000; how did you arrive at that figure? A. By taking the total cost of the line and deducting therefrom the sum of the payments made by the Attleboro Company and the Seekonk Company;

that represents the actual money which the Narragansett Company has now invested in that line.

Q614. How much money has the Narragansett invested in that portion of the line owned by the Seekonk Electric Company? A. None.

Q615. Who has that investment, the Seekonk Electric Company? A. The Seekonk Electric Company; they paid for that line.

Q616. But that is a subsidiary to the Narragansett? A. Yes.

Q617. You control that company through the ownership of its entire capital stock? A. Yes, sir.

Q618. What is the amount of the investment of the Seekonk Electric Company of that portion of their line which supplies on the Attleboro from the State Line to the Attleboro line? A. I don't think I have that figure available here. 488

Q619. It was \$4,500 a mile for the transmission line? A. Yes; times the number of miles.

Q620. Now, the total number; you don't know the total cost then, the total actual cost of the construction of the line from East Providence to where you deliver this electricity to the Attleboro Steam & Electric line? A. That—no, I haven't the total here.

Q621. Does it appear in any of the exhibits you have presented here? A. No.

Q622. Mr. Graustein: Just a moment; the point of delivery is the State Line, is it not? A. In schedule 125. 489

Q623. Mr. Chairman Bliss: What I am trying to get at is the investment, either directly or through its subsidiaries, of the Narragansett in transmission line facilitates to carry its electricity from the East Providence substation to the point it

is actually delivered to the lines owned by the Attleboro Steam & Electric Company; you say that does not appear in any of your exhibits? A. I don't think so.

Mr. Graustein: On our theory the Narragansett Company could make a charge for the investment made through the Seekonk; as far as this contract is concerned we have treated the Seekonk as an entirely outside party.

Q. Mr. Chairman Bliss: How does the Seekonk get its return? A. They charge rent on use of its
491 transmission line.

Q625. Who pays the rental? A. The Attleboro, presumably.

Q626. That is part of the terms of the contract, that they pay rental? A. Under schedule 125 there is no direct—we filed a schedule and provided under that schedule to get electricity to the State Line of Rhode Island, and that is as far as we carry the electricity. Presumably the Attleboro Company would take the electricity at that point, and the most convenient way at the present time is undoubtedly by the running of a transmission line from the Seekonk Electric Company.

Q627. Do you mean to say that, if this proposed
492 schedule which is under consideration becomes effective, the Attleboro Steam & Electric Company are left without any relationship from the State Line to the point where their line construction commences and they have got to negotiate with your subsidiary company, the Seekonk Electric Company, in order to continue service from the Narragansett? A. That is what the rate contemplates.

Mr. Graustein: My impression is that the contract between the Attleboro and the Seekonk would probably remain in effect; that is to say, this new rate would change the price charged by the Narragansett, that the Attleboro would still be entitled from the Seekonk as against the Seekonk to use the Seekonk line on the basis specified in that contract, so that is taken care of outside the rate.

Mr. Chairman Bliss: Is that apparent in any of the exhibits?

Mr. Graustein: The contract itself is Exhibit 1, and that covers that feature of it.

CQ628. Mr. Dodge: I want to ask you this, Mr. Gray—the fact is you sold a part of this transmission line to the Seekonk Company your subsidiary at a loss? A. Yes.

CQ629. And that loss which you there made you now seek to charge up to the Attleboro Company in this new rate? A. It is being charged in that line; yes, sir.

Q630. Mr. Chairman Bliss: What was the loss? How much did the actual construction cost exceed the estimate of cost? A. I haven't that figure available; it could be procured very shortly.

Mr. Graustein: I think we have those figures. 495

Mr. Chairman Bliss: Of course, I would like to have this thing brought out definitely.

Q631. Mr. Gray, will you refer to Exhibit 10—on page 5 of that exhibit? A. Yes, sir.

Q632. In the year 1920 the unit for generating and delivery cost was .0116329? A. Yes, sir.

Q633. In the following year 1921 it became .0098456? A. Yes, sir.

Q634. Why did that sudden drop in unit generating and delivery cost come about? A. That was mainly through the decrease in fuel costs.

Q635. The following year, 1922, there was a similar drop; to what was that due? A. I don't believe I can state offhand why the generating and delivery cost has a downward tendency. I believe it is principally on account of fuel costs and increased efficiency.

497 Q636. Was it due in any respect to using larger generating units in your generating plant? A. It might be.

Q637. When did you place in installation the first of your large turbines? A. I don't believe I have that figure available.

Q638. Didn't the use of those turbines operate to reduce the generating costs of electricity? A. Oh, yes.

Q639. Then the second one of those turbines must have been placed in use some time during this period of three or four years? A. Yes, sir.

Q640. Do you remember when that was? A. No, I don't remember the date.

498 Q641. Now, in the year 1918 you show that there was a net loss to your company of \$38,781.04? A. Yes, sir.

Q642. That includes return on investment of full 8 per cent.? A. Yes, sir.

Q643. And the next year in 1919-1918 covered a period of nine months? A. Yes, sir.

Q644. In 1919 the net loss to your company was \$48,735.60? A. Yes, sir.

Q645. Including a full return to your company?

A. Yes, sir.

Q646. At 8 per cent.? A. Yes, sir.

Q647. Now, in making your estimates at the time you entered into this contract with the Attleboro Steam & Electric Company you anticipated a loss during the earlier years of the operation of that contract, did you not? A. Less than our full rate of return; yes, sir.

Q648. What loss in dollars and cents did you anticipate for the year 1919? A. We didn't figure the loss that way; we averaged that price for the 20-year period which would return for the entire period an 8 per cent.

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Q649. Did you lay out a curve to show the losses as they would appear during the earlier years of the contract as against the later years? A. No; we established what we thought would be the average unit cost of plant and average generating costs and of course, the assumption that we would increase our efficiency during the later period of the contract, and that the unit costs would have a downward tendency, the income must of necessity be less than the full return during the earlier periods of the contract.

Q650. When did you first encounter these rising costs on machinery there, which increased your costs of operation so far as machinery was concerned, investment in machinery of plant, to double what it was before the war, when did you first meet with these increased costs? A. If you will allow me to get a paper there—in 1920 we contracted for a turbine at—a 47 K. V. A. turbine at a greatly increased price over the previous one.

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Jesse E. Gray—Redirect

Q651. Did you—contracted for it; you paid for it after it was installed, didn't you? A. Yes.

Q652. That would not be apparent in the 1920 figures you presented here, would it? A. That cost would not get into 1920.

Q653. Did you, in the years 1919 or 1920, actually pay out these increased costs, actually make this increased investment which would be apparent in this tabulation here, which you present here in Exhibit 10 on page 5? A. I won't say; there had been a great deal of capital invested prior to 1920.

503 Q654. You did meet with increased costs when you constructed this line in order to start furnishing this electricity in 1918? A. Yes, sir.

Q655. At that time your material costs were very much higher than the cost at the time you had estimated the work? A. And at the time we contracted to build it.

Q656. Now, the fuel costs were automatically transferred to the Attleboro Steam & Electric Company under the terms of your contract, were they not? A. Yes, sir.

Q657. Were you, under the terms of that contract, amply protected so far as fuel costs were concerned? A. I believe we were.

504 Q658. So that so far as the contract was concerned there was no advantage to you in decreased fuel costs and there was no injury to you on account of increased fuel costs? A. Assumed that we used—yes, I think that statement will be correct.

Q659. And that was during the entire period of the contract upon which the original rate was based? A. Yes, sir.

Q660. Why is it that you did not attempt to protect yourselves in some way against the in-

creased costs of generating machinery and plant as well as against an increased fuel cost? A. We didn't anticipate an increased cost in machinery.

Q661. It practically amounted to this, you guessed wrong and the Attleboro Company guessed right on what the future was to bring forth in regard to costs of generating electricity so far as the machinery and plant involved was concerned? A. We guessed wrong.

Q662. Now, when did you make your final guess—when did you enter into this contract and execute it? A. The report which we submitted is dated 1916; the data on which it is based was prior to the time of submitting the report.

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Mr. Dodge: The contract was made, wasn't it? A. I think the question was, What time did we base the costs?

Q664. Mr. Chairman Bliss: The contract was entered into, the contract being Exhibit 5, on the 8th day of May, 1917? A. You asked what time did we prepare the figures?

Q665. Yes. A. That was 1916.

Q666. How long did the period of negotiation precede the execution of the formal contract? A. I should say between six months and a year.

Q667. And the data that you used covered what period, that is, what did you use to guide you? A. Prior to the fall of 1916.

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Q668. Hadn't the cost of generating machinery gone up prior to 1916? A. I don't think it had in our own experience.

Q669. The war hadn't affected those costs? A. Not as far as our own experience was concerned.

Q670. Was that because such apparatus as you were receiving was being delivered under contracts that had been entered into prior to the war? A. No; I believe that electrical apparatus was rather slow in responding to the war conditions.

509 Q671. Then what you mean to say is that at the time you entered into this contract there was nothing in the then costs of generating machinery and material that would give you warning of this great increase and continued high level of costs? A. No; I consider there was not anything that gave us any warning. The assumption, I think, was, I think at that time was that the war might possibly be of short duration, if it were, that we might not have to add largely to our generating plant until, if there were a period of high prices, we might charge it.

Q672. In your Exhibit 11, upon sheet 1, Railway motor generation sets; what were those used for? A. We used none of those.

Q673. That has reference to street railway power? A. Street railway companies.

510 Q674. Now, you do use the transformers for synchronous convertors to a considerable extent? A. No, not to—why, to a small extent; in our direct current wholly.

Q675. And those costs would have no reference whatever to this contract? A. No.

Q676. Curtis steam turbine with exciters; is that a type of turbine which you have? A. We use the Westinghouse turbines.

Q677. So that that sheet would have no significance so far as this particular case is concerned?

A. Except to show the trend of turbine prices.

Q678. That showed that at the end of the year 1916 that the cost of such generator sets was 20 per cent. higher than it was in 1914; assuming 1914 is normal you do not consider that of sufficient significance? A. We did not have that data at that time.

Q679. Somebody must have had it at that time in order, at the end of 1916 in order to make this chart, it must have been a matter of record at that time what the cost was—was it not? A. It probably was, if it was investigated.

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Q680. Railway switchboards; that, of course, does not concern this particular case, does it? A. No; except on the price, it may be typical of the price of our switchboards.

Q681. That shows, at the end of 1916, on that 110 per cent. to the 1914 costs. Here is a comparison of prices of the A. C. Generators, sheet No. 13; that shows that at the end of the year 1916 such costs were 130 per cent. of the 1914 costs which are assumed as normal? A. At the end of the year, it may be entirely possible that the prices started to increase late in the fall, subsequent to the preparation of our data.

Q682. What I am trying to find out, Mr. Gray, is this, I am trying to find out what information you had or ought to have had at the time you made this contract, and I am trying through these exhibits to indicate what was the fact in regard to these costs, if it was the fact, and I assume you stand back of these exhibits where you have presented them? A. Yes, sir.

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514

Jesse E. Gray—Redirect

Q683. You think that it was earlier than the fall of 1916 that you got your data to go upon this?
A. It was prior to the fall of 1916.

Q684. About when? Let us fix it for the purpose of studying these exhibits. A. The report was dated November 20, 1916; that is the date that the report was submitted to the Attleboro Company.

Q685. When do you think—you studied the data up to a certain point prior to making a report, didn't you? A. Probably about the summer time.

Q686. About the middle of the year? A. Yes; I should say so.

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Q687. That shows that alternating current generators were about 122 per cent. of the 1914, pre-war normal costs; you didn't consider that as sufficient significance to make any allowance for it? A. If the increased prices were only temporary and it was not necessary for us to increase our plant during that time it would have no effect on us.

Q688. Do the D. C. generators have any reference to this particular service? A. No, sir.

Q689. I notice that in practically all the exhibits show—the sheets contained in Exhibit 11, commencing in the early part of 1916, there is a sharp advance in cost; is not that true? A. Well, this curve apparently——

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Q690. Is not that true of all the exhibits? A. It is true of all the exhibits, but I believe the first four sheets from inspection seem to be one point for each year, and that is connected—and in case of a rising price would indicate something higher than during the year; in the middle of the year, for instance, than the beginning of the year although that might not necessarily occur. That is an extreme increase in price in December. As

far as the platting of these curves is concerned that would show increased prices in the middle of the year whether there were such an increase or not, the last two curves not platted of shorter periods than a year probably.

Q691. The last two sheets show the same tendency as the earlier sheets? A. Yes, sir.

CQ692. Mr. Dodge: Do I understand you to say, Mr. Gray, while you reported on this in 1916 your company actually executed the contract in May, 1917, without any investigation of the rapidly increasing prices of everything? A. I know of no such investigation.

CQ693. You claim your company was ignorant 518 of the fact that this contract was made at a period when prices were rising more rapidly than almost any time in history? A. We knew prices had an upward tendency. If it were not necessary for us to increase our plant during the period of high prices it had no effect on us.

CQ694. Didn't you hear it suggested that your company had it in mind in persuading Attleboro to come into this contract to apply to the Commission here to change its terms? A. Would you repeat that question?

CQ695. Did you ever hear it discussed among your officials at the time this contract was being made and the Attleboro Company was persuaded to sign it, that it would not be binding on your company because you could come to this Commission to get it changed? A. It was not discussed. 519

CQ696. It wasn't discussed at that time? A. No, sir.

CQ697. Well, the situation which existed at the time, in May, 1917, as these curves show, was indi-

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Franklin L. Hall—Direct

cated perfectly plainly the exact situation which has resulted, didn't it, namely, a rapid increase, temporarily at least, in prices in the period immediately after the contract was made? A. I would not say so.

Mr. Dodge: I don't think of anything else.

FRANKLIN L. HALL

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FRANKLIN L. HALL, having been duly sworn, testifies as follows:

Direct Examination by Mr. Graustein:

Q1. You are connected with the Narragansett Company? A. Yes, sir.

Q2. In what capacity? A. Secretary and treasurer.

Q3. Are you familiar with the market value of the company's stock? A. Yes, sir.

Q4. Do you know what it was on December 31, 1923? A. Approximately \$64.

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Mr. Dodge: I object. I understand that is a factor that is not regarded as of any importance in rate cases.

Mr. Graustein: Some justices of the Supreme Court of the United States seem to think it is important.

Mr. Dodge: I don't think so.

Mr. Chairman Bliss: I think in the case of *Smith v. Ames* they have said you could consider those things.

Mr. Dodge: They said so in *Smith v. Ames* but I don't think it is received in rate cases at all.

Mr. Graustein: I think I can submit decisions——

Mr. Dodge: —of the Supreme Court of the United States?

Mr. Graustein: Yes.

Mr. Dodge: I should be very glad to receive them. Perhaps it would be shorter to waive my objection to this.

Mr. Chairman Bliss: I do not see how it can do any particular harm to the Attleboro Steam & Electric Company. We will permit it to be introduced there. 524

Q5. Mr. Graustein: You may answer the question. A. Approximately \$64 a share.

Mr. Graustein: I may say in the Georgia Railway case, decided June 11, 1923, it was, I believe, the opinion of the majority of the Court that the value of securities is a factor to be considered.

Mr. Dodge: That is the very case where the Commission said they absolutely refused any consideration.

Mr. Graustein: That is all, Mr. Hall.

Q6. Mr. Chairman Bliss: As of what date was that, Mr. Hall? A. December 31, 1923.

CQ7. Mr. Dodge: That is, stock par value 50 was selling at \$64 a share? A. Yes, sir.

CQ8. And it sells about that price now? A. About \$65, the present time.

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Francis J. Stanwood—Recalled—Direct

CQ9. The tendency of recent years has been upward, has it not? A. No, sir; the tendency of recent years, up to the war, was upward; from the time of the war to the present time it has been downward. The last year or two was slightly upward.

CQ10. What was the stock selling for in 1922, the last day of 1922? A. I should say \$64 to \$66 a share.

CQ11. The price, I take it, more or less turns on the interest rates for the time being? A. Somewhat, yes.

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CQ12. That is, it sells now on the 6 per cent basis. A. Just about that.

Mr. Graustein: That is all.

Q13. Mr. Chairman Bliss: During this entire period it has paid an 8 per cent. dividend on the par value of \$50? A. Yes, sir.

Mr. Chairman Bliss: Is there anything else?

Mr. Graustein: Nothing else.

Mr. Dodge: I have some figures about the Seekonk.

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F. J. STANWOOD is recalled by Mr. Dodge.

Q97. Mr. Stanwood, does your examination of the books of the Narragansett Company enable you to state how much the cost of the transmission line from Providence all the way through to Attleboro exceeded the cost of the line in Rhode Island plus

the same actual charge to Seekonk and Attleboro at the rate of \$4,500 a mile? Or to put it in another way, what was the cost of the Seekonk and Attleboro part of the line in excess of \$4,500 a mile?

A. You ask what the total cost of the line was?

Q98. I shall ask you that further. A. We examined the construction ledger of the Narragansett Company and found on the heading marked X1595 these totals: \$102,343.93 for the total cost of the entire line from East Providence to Attleboro.

Q99. And that is how many miles long? A. Roughly twelve something, I think.

Q100. Something over \$8500 a mile? A. The cost of, the cost per mile, after subtracting from the 102 the amount paid by Seekonk of \$11,745 and \$19,530 by the Attleboro Company, the remaining mileage being 9.6 miles divided into—what I was trying to answer was that it cost about \$8,200 a mile.

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Q101. How much was the mileage in Attleboro and Seekonk? A. The mileage in Attleboro was taken at 4.34 and in Seekonk 2.61.

Q102. Just about seven miles? A. Yes; nearly seven miles.

Q103. And at the average rate of construction of the entire transmission line that would amount to about \$57,000? A. Yes.

Q104. For which the Narragansett Company charged under the contract \$4,500 a mile or a little over \$30,000? A. \$31,000.

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Q105. Then the difference between the costs of the operating line in Attleboro and Seekonk and the thirty odd thousand dollars received from those two companies is how much, can you tell us? You gave me a figure, sitting down here a minute ago, some-

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Francis J. Stanwood—Recalled—Cross

thing—\$20,000; what was that? A. \$20,000 is the difference between the value of the transmission facilities shown in the new rate No. 125 over the cost of these transmission facilities on which they ask for an 8 per cent. return in billing schedule No. 101 for 27 months.

Q106. That is, you find the cost of the transmission line has been increased some \$20,000 in this proposed new rate over and above what it was figured under rate 101? A. Yes, sir.

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Q107. You haven't any figures which enable you to state just what the portion of the transmission line in Rhode Island cost? A. I could compute it in a few minutes.

Q108. We have the average of the whole distance; is there a way to tell just what the line in Rhode Island cost? A. Not from my figures accurately; we would have to do it on a division of the mileage basis, dividing the underground from the overhead and the mileage on each, and that might or might not be the correct actual cost in the sections. We couldn't obtain the actual cost.

Mr. Dodge: That is all.

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—CQ109. Mr. Graustein: I want to make clear one thing which I think I understood you to state—I want to be sure of it; that is, that these figures and this discussion in regard to how much the line in Rhode Island cost, as distinguished from the total line, all your conclusions are based upon an assumption that one mile in Rhode Island cost just the same as a mile in Massachusetts; is that correct? A. Just what testimony do you refer to?

CQ110. That which you have just given. A. The cost per mile?

CQ111. Yes. A. I didn't testify definitely of the cost per mile.

CQ112. So far as you have given any allocation of costs as between the Seekonk and Attleboro, and Pawtucket, the allocation has been based on mileage; is that true?

Mr. Dodge: I don't think he has given any allocation; that is the figure he says he has not got.

Mr. Graustein: If that question bothers you.

Mr. Stanwood, I will ask you a different one. 536

A. All right. I am having difficulty with that question.

CQ113. The Narragansett figures are based on an estimated cost of \$77,000 for a transmission line in Rhode Island; do you recall that? A. Yes.

CQ114. Do you question the correctness of that figure? A. Yes, I question it.

CQ115. On what basis? A. Just the general basis that the construction of the overhead line should not be materially different.

CQ116. Materially different where? A. Between Roger Williams avenue and the Attleboro station.

CQ117. That is, you question it wholly on the theory of prorating the cost over the mileage; is there any other reason to question it? A. At the time we made this examination we investigated and saw the construction ledger which holds the itemized cost, showing all the different items, poles— and by the way, costs of building of underground, 537

cost of the land at Broad Street, interest on all these items; it also shows credits for the amounts paid by the Seekonk Company and the Attleboro Company, and these costs were taken from the books, and at that time I think the question was asked—I asked the question of some member of the Narragansett concern whether this \$4,500 paid the costs, and they said it did not, and more or less agreed that the costs were more than \$4,500; then the conclusion that if \$4,500 did not pay the way into the town of Attleboro then of necessity there would be an investment as to the Narragansett any way in there.

CQ118. That would be because of the fact you assume a division of the cost is based more or less on mileage? A. Yes, it is pretty hard to see that \$20,000 can be accounted for the 2.7 miles in the town of between Roger Williams Avenue and the Seekonk line.

CQ119. But some of the Rhode Island mileage was more expensive to construct than the average, wasn't it? A. I should judge so—getting nearer civilization.

CQ120. More densely settled? A. Yes.

CQ121. And also some of the Rhode Island mileage was underground? A. Yes, a small block of that; we have got that block separated.

CQ122. So that if there is an excess of \$70,000 we don't know how much it is? A. No, no; I don't know how these contracts were let but it is quite possible that the Narragansett concern might separate the costs more closely. It would seem to have been well to have done it in the first place.

Mr. Graustein: That is all.

Francis J. Stanwood—Recalled—Redirect

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Q123. Mr. Dodge: Now, you are asked for—raising the question of the \$70,000 let me call your attention to two things, and ask you whether those are of any significance; in the first place, you have told us that this same item was figured at \$50,000 under the billing to us in the 125 rate? A. Yes, sir.

Q124. Does the fact that it has been increased to something over \$73,000 in this contract have any significance? A. Yes.

Q125. Is there any possible reason why that figure should increase unless this—under a new contract it was an attempt, as Mr. Gray says it was, as I understand him, to get back now out of Attleboro the loss on the sales of these transmission lines—the Seekonk and Attleboro? A. No reason to believe it was otherwise.

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Mr. Dodge: That is all.

Q126. Mr. Chairman Bliss: What did you say the total distance was, the total length of this transmission line was? A. I can take these facts—

Mr. Dodge: What is the total distance?

Mr. Chairman Bliss: Give me the total distance.

A. 11.56.

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Q128. And that commences where in East Providence? A. East Providence, I presume the port-holes in the walls of the station underneath right approximately to the Attleboro station.

Q129. What is the total length of the Attleboro Steam & Electric Company that they paid \$4,500 a mile for? A. 4.34.

Q130. And of the Seekonk Company? A. 2.61.

Q131. And of the portion of the Narragansett, the total amount in Rhode Island there, that they constructed? A. 4.61.

Q132. You made some reference to \$8,200 a mile; what did you have reference to? A. I thought that to be the figure, then I hesitated in the mile computation when I realized I would have to correct—\$8,200 is the mileage cost taken by the officer of the Narragansett Company in order to create a value of the two—this block in here, on which they would base their charges on in 101, and that is borne out by evidence in a copy of a bill that we have here. Under 101 they made charges for transmission lines and in getting the value from the East Providence station to the junction of Roger Williams Avenue they obtained it by making deductions divided by mileage in order to get that amount, just simply used for the purpose of establishing a value in making up this schedule 101.

Q133. Do you have reason to believe that they took the entire costs of this line from the East Providence substation to the end of the line where they deliver it to the Attleboro Steam & Electric Company, and then deducted from that the contract for the Seekonk and Attleboro portion, and then charged the rest of it as investment in Rhode Island? A. I have reason to believe that was the procedure.

Q134. Now, you stated that the total amount received by the Narragansett Company for the 2.61 miles constructed for the Seekonk Company was \$11,745? A. I did not see the voucher; that is the amount entered in the construction ledger and I took it for a fact.

Francis J. Stanwood—Recalled—Redirect 547

Q135. Well, is that at the rate of \$4500 a mile?

A. Yes, it is.

Q136. And the portion constructed for the Attleboro Steam & Electric Company was 4.34 miles?

A. Yes.

Q137. And that was charged, that \$19,530? A. Yes, sir.

Q138. And that was also at the rate of \$4500 a mile? A. Yes, sir.

Q139. Now, the sum of those two figures representing the payments received by the Narragansett under the contract rate is \$31,275? A. That is right.

Q140. So the total cost of the line was \$102,343.90? A. Yes. 548

Q141. If you deduct the \$31,275 from that you have a balance of \$71,068.90? A. Yes.

Q142. Now, the total mileage of the Seekonk Company is 2.61 miles, that of the Attleboro Company is 4.34 miles, making a total of the two combined of 6.95 miles? A. That is right.

Q143. If you deduct that from the total distance—I think you gave the figure 4.61 miles remains? A. Yes.

Q144. Out of a total of 11.56 miles, deducting the Seekonk Company and Attleboro portion 6.95 you have 4.61 miles? A. That is a fact.

Q145. Now, if you divide the amount of the total remaining by the 4.61 miles you get an item of about \$15,500 a mile, do you not? A. That looks reasonable. 549

Mr. Graustein: I think he testified that it was 9.6 miles in Rhode Island.

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Francis J. Stanwood—Recalled—Redirect

The Witness: That was the testimony I started to read from this paper and I realized that it was misleading and stopped, and told you I couldn't give it.

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Mr. Chairman Bliss: The figure that he gives us now is 11.56 miles as the total distances, and if you deduct the Massachusetts portion which is charged off at the rate of \$4500 a mile under the contract, we find that the remaining portion of the total there divided by 4.61 leaves about \$15,400 a mile there as the investment cost in East Providence. You have brought out from the witness a certain difference in the character of the construction in East Providence, a certain portion being underground, cables and so on. It seems to me the evidence pretty clearly discloses the fact that you could not put that charge in on the Seekonk or the Attleboro end of it because you were bound by the contract and you had to put it somewhere and put it on the Rhode Island end whether it is actually owned or not?

Mr. Graustein: It looks whatever balance there was is in Rhode Island.

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A. The cost of the underground, shown by the construction ledger, is \$5561.61 for .32 miles.

Mr. Graustein: Does that include ducts as well as construction? Or only construction?

A. 13,446 feet, dug feet, amount \$1048.79.

CQ148. Does it include cables is my question?

Francis J. Stamwood—Recalled—Redirect

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I don't know that it is proper to dig out the items——

Mr. Chairman Bliss: Of course, it seems to me——

A. It does not appear.

Mr. Chairman Bliss: —that the Narragansett has not any right to charge up the investment there when in the investment, and contract with the Seekonk Electric Company and the Attleboro Company, and arbitrarily put that back in Rhode Island although it does not physically exist there.

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The Witness: The cables are separate items, cables, conductors, devices, are \$6,387.45.

Q149. Covering what distance? A. The same, .3; that makes a total cost of the underground according to these items of \$11,949.06.

Q150. Mr. Dodge: Any reason why the rest of the distance should not have been about the same per mile in Rhode Island as in Massachusetts? A. Well, judging from getting out of the ground in East Providence the first mile and a half ought to be pretty expensive, and after that part run about the same way; it goes on the Attleboro right of way, it ought to be the same thing all the way, they are the same character as in Attleboro.

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Q151. Does your examination of the books of this company enable you to say what rate they were paying for borrowed money in 1923? A. We saw their note book and their rates of interest paid and we averaged for the earlier years as I remember for

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Francis J. Stanwood—Recalled—Redirect

1923, the first part of it—our examination stopped in the middle of the year—was something like 4.9 for the average.

Q152. In those figures as computed in Exhibit 1, upon which the proposed rate is figured, at what rate is interest allowed on the fuel stock on hand?

A. Seven per cent.

Q153. What rate is interest charged, say, on the invoices paid by the company in advance? A. Six per cent.

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Q154. Is there any credits for discounts? A. None that we could see; excuse—I would like to change that answer. I do not remember any credits for discounts.

Q155. What is the interest charge on construction costs? A. As I remember it, 6 per cent.

CQ156. Mr. Graustein: If you took the average of the cost of their stock at 8 per cent and the average cost of money received on notes at 4.9 per cent, took the weighted average of the two you would find the average cost of their money was far more than 7½ per cent, would you not? A. We didn't do it that way.

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Q157. No; that is what I would like—if you did take the weighted average cost of their money, stock money or note money we would get a figure, one in excess of 7½ per cent? A. Oh! no.

CQ158. Do you know how much stock it had outstanding? A. No.

Q159. Your figures show; will you look? A. How much capital stock outstanding?

CQ160. Yes; unless you want to admit it, Mr. Dodge.

Francis J. Stanwood—Recalled—Recross

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Mr. Dodge: It is obvious, of course.

Mr. Graustein: Then I will withdraw the question. That is all.

Mr. Dodge: I have no further evidence.

Mr. Graustein: Nor have I.

Mr. Graustein: Before Mr. Dodge begins he is agreeable to the introduction of two additional exhibits showing the boiler costs and the turbine costs of the Narragansett Company, that is, the cost for new boilers and new turbines over the periods of years running from 1907 to 1920.

Mr. Dodge: I will agree, if Mr. Gray were called to the stand, he will testify to that effect.

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Mr. Chairman Bliss: They will be attached together and marked as "Exhibit 13."

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Arguments of Counsel.

Mr. Dodge: Mr. Chairman, in this very excellent stenographic transcript I noted just two things at the beginning that I wanted to ask to have changed. On page 6, in the fifth line, the word "reels" should be, of course, "rates"; and four lines below that I am very sure that word "consequently" should be "secondly."

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One other thing; I am quite sure that at the outset of my argument I mentioned one point which does not appear here and that is the point upon which we have always laid stress, that this is a contract relating to interstate commerce and therefore that the court has no jurisdiction over it. That does not involve changing this record but I simply want to make it plain that I am very sure I said at the beginning, and I repeat now, that we want to reserve our rights upon all those legal questions including the general contention that this Commission has no jurisdiction over interstate rates and that and all the other questions of law which I raised in my opening I say no more now than to repeat that we do, of course, not waive those points.

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Mr. Chairman Bliss: I will say that we will have attached a transcript of the arguments of counsel so that all those matters will be a matter of record.

Mr. Dodge: This, may it please the Commission, is a case of very great importance and possessing a high degree of novelty. It can not possibly be argued by me, even although I am generally brief in my arguments, in five minutes. It involves many questions of difficulty of great importance to both

Argument of Counsel

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sides. They want to get from Attleboro some \$50,000 a year more than they are entitled to under the contract. They want to get it for all the remaining years of the contract. They sweep that aside and ask us to pay now what amounts now to 50 per cent more than we are paying under the contract and it is, of course, a question of very great importance—this proposed new rate 125, and although a general rate for electric companies, in form, is conceded to be the rate that is aimed by this contract with the Attleboro Company, and it is practically conceded by Mr. Gray that it was made general in terms in order to avoid, partially avoid the possibility of legal difficulty—in substance, of course, it is nothing but to avoid the contract with the Attleboro Company. We were the only concern notified of the hearing; the only one required to be notified. There is not any other electric company of the sort that this rate would apply to that takes anywhere near the amount of current that this rate applies to, but only a small fraction of the amount of current, therefore, your Board, of course, will appreciate that this is an attempt to avoid the contract with the Attleboro Company.

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Now, I say that the situation is unique. Here was this contract, solicited from us, not sought by us. We were making our own power, our own current there in Attleboro, and content to do it, and these people came over there and after month after month of negotiations and persuasion induced us to make this contract with them—and submitted reports and arguments in writing as to why we should enter into this contract. They did that at

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a time of most rapidly increasing prices. Every chart in evidence here shows in the early part of 1917 and all through 1917 there was a constant, tremendous rise in prices of everything, all materials in this country and they must be taken to have known that. It can not be assumed that this company did not know what was going on at that time.

569 We were finally persuaded to enter into this contract, and in good faith entered into it, and it contains a great deal besides the mere rate that is charged to us. It included an agreement on their part to build a transmission line in Rhode Island and stand the cost of that. It included the agreement on our part to pay them at the rate of \$4500 a mile for the line in Attleboro; an agreement with the Seekonk Company in the same amount for the line at Seekonk; an agreement by the Narragansett not to charge any more but to accept that in full. It contained a guaranty—I don't know where this will leave us if the Board permits this contract to be abrogated—it contained a guaranty of the Narragansett Company to the performance and to the Seekonk Company to its obligation under the contract. Now, where are we left if this contract is thrown aside? Are we left with no redress so far as the distribution line of Seekonk is concerned
570 except against that little shell of a company, or not? The contract contains many other provisions. We were persuaded to make it. As a result of it we gave up our generating plant, dismantled it, put it out of business, and are in no shape today to reestablish it.

Then they come here because they are not making quite so much money as they think they ought to make on this contract—and I shall point later that it is entirely a question of this 8 per cent. There is not any doubt a pocket loss—this contract. It is a question how much of that 8 per cent they are going to get back which at the present time they are not getting under the contract, I say, when for some reason it does not work to their satisfaction. After we have dismantled our plant they come here and file this new rate.

Now, Mr. Chairman and Gentlemen, they abandoned entirely the question of giving us any preference because we had this contract, to concede to us any rates whatever. They fabricate a new rate which is based upon the maximum of charge that they can possibly make to a new customer without any rights at all against them going beyond, as I think I can point out, what ought to be the maximum to such a customer, resolving every single doubt in favor of themselves and making up this rate on a basis of costs and returns of 8 per cent and everything else, which figures some 50 per cent higher than we are now paying.

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Now, the contract was more than an ordinary contract which are often dealt with by commissions and courts. In this case it is a contract which has received the sanction of this Commission by sanctioning a rate for twenty years. Your Honorable Body sanctioned this contract. That is a factor. That is not present certainly in most of the cases in the books which deal with rates. Commissions establish new rates irrespective of contracts. This

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contract came before your Board under a statute which permits discrimination in proper cases. It came under a statute which called upon your Board, or authorizes your Board to approve if you see fit a rate which would otherwise be discriminatory, where the circumstances are different from the charter, and your Board did approve this and set your sanction upon it, and the Attleboro Company was entitled to relief upon the contract. Under the contract we were to stand no loss. That is another valuable factor, that is, the electricity we were to pay for was metered in Attleboro, in our own plant, and not in Providence. We were to pay a return upon the cost of the line which we built in Attleboro. We were to pay a certain sum annually as part of the charges of maintaining the station, staff of labor made necessary by this contract which we should not otherwise have had to incur. All those things are now wiped aside by this new rate. There is substituted a rate to which we are not a party to that bargain, as to which we are not given any opportunity to bargain with them. We are treated exactly as though we were an outsider, a customer to them now for the first time for rates. They figure the rate in these exhibits of theirs in every way so as to give this maximum advantage. They don't make the slightest concession to us because of the fact they persuaded us in this arrangement originally. They resolve every doubt in their own favor and have filed a rate here which they set as a standard and from which they compute losses, and even with this resolve of every doubt in their favor and piling up upon us every charge that they could possibly and their appor-

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tioning expenses to us in a way that is unjustifiable, even at that they can barely show a loss that exists. This 8 per cent return—you modify those figures of theirs in the slightest degree and you will find, Mr. Chairman, that what we are fighting about here is the 8 per cent return. They are getting a part of it; they want the rest of it. That is the whole reason why they are throwing over this contract in spite of the fact that, by their letter to your Board at the beginning they state they didn't expect to make 8 per cent during the early years of the contract. Now, the average unit cost was \$45 when the contract was made; and the generating plant, it was \$77.53 in 1918, according to the figures in this last exhibit. That must have been because of conditions which were obvious to every one in 1917. The average unit cost could not have jumped over \$30, more than 66 $\frac{2}{3}$ per cent in one year without giving fair warning of the conditions of prices.

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The contract was made, as we say, in a period of rising prices. What has happened was to have been foreseen. What has happened in the way of return was foreseen and expressly stated in the letter. They are making now a small percentage of return on this contract, perhaps 2 or 3 per cent, which they told Mr. Fales in 1921 they were making, and they want to get the rest of the 8 per cent. Mr. Gray says if the unit cost had remained \$45 "we would be all right." Mr. Chairman, you asked him that question, If the unit rate had remained \$45 you would not have been here? And he said, No. Now, that is one of the most significant admissions made in this case because, what

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Argument of Counsel

does he mean? If the unit cost had remained \$45 they would have been satisfied. Now, if you take these figures of theirs which are submitted here you will find that if the unit rate had remained \$45 they would have made in 1923 only \$21,000 less than they are seeking under this new rate; in other words, what they are now, a rate that was satisfactory would have been satisfactory to them is the rate which, if figured on this new basis, would have amounted to \$30,000 more than we are paying now. I call your attention to that as showing that these new rates are not figured right because they have told you that they would have been satisfied with a rate based on a \$45 investment cost presumably because the rate figure of that cost would have been substantially what they are getting now. But if you adopt this erroneous method of figuring that they give in these exhibits you will find that the \$45 average would be—figured on this basis would cost us \$30,000 more than we are paying now. I call your attention to that because it shows that these things are not figured right. The way I get at that \$21,000 is this: you will recall that some \$12 of the \$19 which they propose to charge us for capital cost is based on what is said to be our proportion of the generating plant capital costs and those costs all come down and are dependent upon an average valuation, in 1923, the average unit cost of about \$90. If that average unit cost were only \$45 that \$12 would be \$6. Take off \$6 on 3600 kilowatts \$21,600; so that if this rate should be computed in either respect just as it is here but on a basis

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of \$45 unit cost, you would get a rate that is not substantially equivalent to what we are paying here but \$30,000 or thereabouts higher; in other words, that is conclusive proof that this method of figuring is not accurate. It is everything for the Narragansett Company and nothing for Attleboro. It shows also what they are after here is the rest of their profit, and you will recollect they figured in 1923 they didn't quite make expenses, charging everything on this liberal basis, interest, everything else—four thousand odd dollars—that is taking everything 100 per cent for the Narragansett Company it is 150 per cent of what they are entitled to in justice. Though they have given a figure of only a loss of \$4000 I say, as a matter of fact, that loss was not incurred. There was a partial profit upon the contract. Now, the other points of law that I have spoken of, I take it your Board is not going to resolve or decide in my favor, but that you are going to take jurisdiction in this case. You will, however, of course, proceed in the light of the settled principles of law, many of which were declared by Judge Brown in our case, and the most important principle is this that, granting for the moment that your Board has jurisdiction to set aside a contract where conditions require it, you have that jurisdiction only where the public interest makes it necessary that the contract should be set aside. That does not mean that a contract should be set aside in the public interest merely because it does not yield a full measure of 8 per cent profit. That is perfectly clear. What is meant is that if a contract is so unprofitable, so costly to the Narragansett Company that the

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carrying of it out involves a risk, a danger that it will not be able to perform its duties to its other customers properly, that it will not be able to supply them satisfactorily with current at reasonable rates—if that is really endangered then the public interest comes in and justifies your Board, in proper cases, to authorize a rate which violates the contract.

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Now, Judge Brown spoke over and over again, in his opinion, on that point and stated the issue in that way. He began by quoting from 295 Federal Reporter at page 1901, by quoting from Judge Southern's opinion in the Supreme Court of the United States where he says that, while a State may exercise its legislative power to regulate public utilities and fix rates notwithstanding the effect may be to break or abrogate proper contracts, there is quite clearly no principle so impossible of application to do so merely to relieve the contracting party from the burdens of the imprudence of undertaking the power to fix rates when exercised first for the public welfare to which private contracts must yield; but it is not the independent legislative function to vary or set aside such contracts however unwise and unprofitable they may be. The power does not exist *per se*. It is the intervention of the public interest which justifies, and Judge Brown goes on to say, in his own language, that the recital, or finding the recital in your order, which was under examination by him, that the contract though unprofitable, therefore, discriminatory, is a *non sequitur*; in other words, you have got to find more than the contract was unprofitable in order to find that it is illegal and

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discriminatory. He went on to say, There is nothing in the record to show that the defendant brought to the attention of the Commission any evidence that the company would be unable to perform its full duty to the community whose interest it is the function committee (Commission) to protect.

Again, even if the Commission had received an *ex parte* statement that a single contract was for the time being unprofitable then it was for them further to establish the fact that the public interest had been injuriously affected.

Now, that is the law, and many of the cases of our brief were cited to Judge Brown at the arguments of this case. I am not going to take time to quote them in full because I think Judge Brown's opinion is important, but in some of the other cases it has been amplified a little more. Here, for example, is an excellent statement in the Wichita Railroad case and Kansas, and this is the only one which I will burden your Board with reading it. For instance, they had performed all the contract in question but it bore so heavily on the Power Company that its general revenues would be depleted to an extent that recoupment would have to be made at the expense of the other customers or would otherwise be reflected adversely in its rates and services to that portion of the public served by the Power Company before the contract could be abrogated by the police power; but if the continuance of the performance of the contract would only * * * then the public interest would not be affected and there would be no action

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or excuse for the intrusion of the State's police power; in other words, it is not enough for the Narragansett Company to say if we get the rest of our 8 per cent, if we get our full 8 per cent on this contract we would apply it to reducing rates $\frac{1}{2}$ c a kilowatt on the householders customers. That is not enough; and the absence of such intention is absent entirely here for those householders customers are paying excessive rates; under their improvident contract means that the company is not making money on it, and if it did make money it could apply that money to the benefit to some of its other customers. That is not enough. Under the law you have got to find the company's ability to serve its other customers at reasonable rates and make a little surplus for itself is endangered by the continuance of the contract. Now, here we have Mr. Graustein saying in his opening statement, The question before the Commission is whether the contract rate is a fair rate and, if not, whether the proposed rate is a fair rate? Now, that is a very simple way of stating the question but I submit it is not at all the question before you. That would be the question if there were not any contract in the case at all. But contracts mean something and among other things they mean, as Judge Brown says, they are not to be set aside merely because the rate named in them considered *de novo* would not be fair, merely because the proposed substitute rate is fair, but only where the public interest, the interest of the other customers in getting their power at reasonable rates is involved, and the company can not have redress merely because it wants to get more profit.

Now, here we have a company that is extremely prosperous. We have shown that its ability to serve its other customers reasonably is in no way affected by this contract. We have shown that it has a surplus for 1923, after paying its 8 per cent dividends, of \$293,000; that its surplus for the first three months of 1924 was \$248,000. Now, they have not applied \$50,000 of the surplus to reduce those poor householders' rate $\frac{1}{2}$ c a kilowatt; they want to get 50c more from us and they say they will reduce them when they get that and maintain their surplus intact. Now, I call your attention to those figures simply to show that there is not any danger whatever that this company will not be able to perform its full duty in Rhode Island. There is no evidence whatever that any rate now being charged by the Company in Rhode Island is unreasonably high. If there were any such rates it would have been their duty to have shown that, which they have not done. The burden was with them. It does appear that never has there been before this Commission a formal complaint of their rates. The testimony so far is that the rates were reasonable. They can not assert a public interest to warrant your Board in setting aside this contract either to put into their pockets the original dividend or a larger surplus, or to reduce other rates unless those other rates are shown now to be unreasonably high. While this contract has been in effect they have reduced their household rates; they have reduced their rates generally on two separate occasions, I think, in the last three or four years. In their last report, which I put in evidence, you read of the condition of prosperity which shows you how far it is from being a

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necessity to the people of Rhode Island, that our contract should be abrogated. You read of the tremendous increase in the amount of their business; you read that the increase in their earnings, increase in the number of customers, increase in their capitalization, and great increase in their surplus. Now, that is a situation where the public interest is not affected at all and we, certainly, are not in a position to say that our solemn contract should be set aside "in order that we may get the full 8 per cent return on this portion of our plant."

Now, I want to call the Commission's attention to certain broad features of this system by which they have figured that they are making a loss on our contract. We have conceded that they are not making the full 8 per cent on this contract—they did not expect to—but we do strenuously deny that they are making any out of pocket loss on the thing. All they claim to have made, figured as they have, all they claim to have made in 1923 in the way of loss is \$4300, a trifling sum, figuring on their own unfair basis of figuring. You remember they told Mr. Fales in 1921 that they were making 2 to 3 per cent but not the full 8. If you take this last exhibit which was put in, Exhibit 10, on page 5 you will observe the loss year by year as they compute it. I don't know whether

prophecy now is going to be any better. They seem to have thought it was in 1917; but accept for the moment this prophecy is accurate, you have on page 5 the alleged net loss, and you have on page 12, you have their 8 per cent return corrected to cover the income tax.

Now, I wish you would compare that column M with the loss which they figure they are going to make. You will see that the loss—that is where the shoe pinches even if their figuring in other respects is correct—they are not able to bring their loss for all the years from 1921 up to that column M, page 12. That is the correct return from the income tax because they have made a loss for every year from 1929—from 1925 to 1928 is substantially the same and for the other years they are not very different; in other words, it is the profit that we are concerned about here.

Referring again to Mr. Graustein's opening statement; he admitted that the rates pretty nearly passed the cost of things, gave little or no return. He said at another time, gives little or no return. Now, it was little, a little return that they expected during the first years of the contract. It is only by figuring on an unfair basis that they can make their net losses come as near the total figures of their return as they do in that figure. It is unfair to charge us 36/1000 of the capital stock cost of the generating plant. They were not doing anything of that sort. Under the rate of 1921, which was thought by them to be in force for the period when they sent their bills to us—under that rate they figured our demand as 2000, their capacity as 60,000, although by Exhibit 10 of the year 1921 it is only 33,000. That shows a feature of unfairness in this claim here. Here is their maximum primary load peak, primary load figured year by year; as it actually was taken for the year 1921 you will see the peak primary 35,000 all through 1921. Now, when they sent us bills

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Arguments of Counsel

in 1921 they did not charge us on the basis of the fraction of which the numerator was our demand and the denominator was 35,000, because they knew and must have known that that was not fair. They put the denominator there and a fraction, 60,000, and charged us with about $1/30$ of the generating costs because we were using about $1/30$ of their current. It is unfair in 1923 to figure that they have made a loss on our contract by charging us with 36.550 of the capital cost of the generating plant which is the biggest item. Of course, in the \$19 rate that is $1/15$ of the cost of maintaining that plant including depreciation—interest, everything else is charged upon us although we are charged only $1/35$ of their current. The Atlantic took one-half of their current, paid four times as much as we did, only took seventeen times as much as the current in 1923 as we were taking. We took only $1/35$, then the Atlantic or the New England Power Company took $1/2$, seventeen times what we did. On this basis the figure would have been charged only four times as much in 1923 towards the expenses of maintenance of this plant. That is not fair. It can not strike any tribunal as just that the cost of maintaining that generating plant should be figured on any such basis as that, or that this Attleboro Company taking $1/35$ of the current should pay $1/15$ part of the cost of maintaining that plant. They took no account at all of the secondary current, which they are selling at a profit and in large quantities.

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Now, of this \$19 which they propose to charge us, amounting to \$60,000 or \$70,000 a year, more

Argument of Counsel

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than half is made up—much more than half is made up of the so-called capital costs attributable to the generating plant, and I say that those are figured on an altogether unfair basis. That charge was at our direction of 55,000, when their own figures put in this morning show they are constantly sending out over 70,000—over 80,000 kilowatts they are sending out at a profit, and they are charging us our proportion of the 55,000. It makes no difference that the secondary current lessens the charge for primary current to all customers of business they do; it presumably lessens the charge to other customers. That does not mean that those other people have not got to pay their share of the costs of maintaining this plant. Furthermore, they have charged in here, into this contract, this new proposed rate. They have taken everything to their own full advantage. They have gone far beyond what they are entitled to. They are actually now, as appears this morning, actually now trying in this rate to get back what they lost through building that line in Attleboro for us, and get back out of us a part at least of what they lost in the Seekonk line. But they had contracted with us to build that line for us for \$4500 a mile and we paid for it in full, and now they are charging us in this rate proposed, propose to charge us every year for a return figured so as to amply protect them on every dollar which they put into the line of Attleboro over and above the contract price to us. So too they have charged us up to the maximum limit with interest on these items, interest of 7 per cent on the fuel on hand, interest on their own invoices paid in advance,

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without giving us any credit for any discounts; interest at a rate higher than they have paid themselves.

Now, they do not issue capital stock for any such items as that. If it represented any actual tying up of their current assets it meant that they merely borrowed money temporarily at the bank, and they have charged us more than it cost. In apportioning the overhead expenses they admittedly have not given us any credit from the fact that we are a single wholesale customer and that they have tens of thousands—60,000 or 70,000 customers in all. They have charged us a proportionate part of the overhead based solely on the quantity of current taken by us. That is unfair. All these features, as I say, serve to pad up the amount of the ideal return which they are seeking for here under this contract and the amount on the loss which they figure.

Now treating, Mr. Chairman, any one of those items differently you reduce this alleged loss—treating all of them, as I submit you should reduce that alleged loss very materially. You take off \$4 from the \$19 and that will make a difference of \$15,000 or \$16,000 a year in our favor. Take off \$4 from the \$19 on account of the excessive way, excessive proportion of the capital stock of the generating station and you get a figure that is \$15,000 or \$16,000 less. You take some of these other items into consideration, you reduce that \$19 still further and get a further reduction in this alleged loss, and I think you will be satisfied, upon a careful analysis of these figures, modifying them where they ought to be modified, that this

Argument of Counsel

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contract is practically today exactly as it was anticipated that it would work in 1917, namely, that it is yielding them a partial profit but not so much as they think they ought to have. And let me come down again to the fact that they concededly—that if the average generating costs had remained at \$45 they would not be here complaining, because if you proceed then to figure the loss on the contract and figure it properly you would not get any loss. If there were a loss we assume that they would be here even if the unit cost was \$45. I ask you to figure that, Mr. Chairman, on the basis of their scheme here because if the \$45 figure would not result in a loss so that they would not be here with the complaint, this method of figuring shown in Exhibits 1 and 10 ought to work out that there was not a loss on this contract. Yet, if you follow that method of figuring, you will find that there would be a loss according to these figures of \$30,000. That condemns this method of figuring because there is not any loss at all, ought not to be any loss at all on that basis. They would not be complaining if that were the unit cost. Further, this method of figuring can not be accurate; it can not furnish a basis for your Board setting aside its formal solemn contract and putting the Attleboro Company in a position worse—far worse—than it would have been in if it had never been persuaded to make this contract.

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The same reasons that show that they had figured their loss on the present contract improperly are, of course, arguments as to the reasonableness of this new rate. We say, even if we had no contract at all, on the simple question before you,

whether this new rate is reasonable, it is not figured on a reasonable basis and cannot be so regarded, but that is not the question.

617 I repeat again, in conclusion, it is a question whether the public interest is involved in any way. The contract can not be set aside merely because it is unprofitable, much less because, as here, it merely does not yield the full 8 per cent. In any case the terminating of the contract, which was unprofitable, might enable the company to reduce rates somewhere else, but that is of no consequence unless those other rates are unreasonably high. Still less is it of any consequence where, as here, the company has a surplus year by year, and upwards of \$300,000, and is amply able without any reference to our contract to reduce those householders' rates $\frac{1}{2}$ c a kilowatt.

Mr. Chairman Bliss: You do not claim the company is carrying an excessive surplus, do you?

618 Mr. Dodge: I do not. I think their surplus as it is running now is amply sufficient to protect the people of Rhode Island against any danger that this company is not going to make money. In former years I understand that it did not earn perhaps a sufficient surplus, and it is entirely proper that it should continue to earn, as the present surplus \$300,000, from year to year, and add it on. There is no suggestion that any of the rates which it is now charging are unreasonable; no suggestion on my part that those earnings are improper and ought to be reduced, but I do say that when they make a surplus of \$275,000 in a year they can not very well say that we need a few extra thousand dollars from you in order to enable us to reduce

our rates to a certain class of our customers. That is the fundamental question in the case—what public interest there is here. The whole thing must be judged, of course, as of the time when they come before you asking you to set aside this contract as there is a public side to these things. Now, we have approved the contract, you have approved it when it was made. It must stand unless a strong case is made out against it, at least, full weight must be given to any contract. All I ask you to do is to change, in the first place, to modify these figures as they should be modified in this method of computation so as to see just what the loss from 8 per cent fairly is. Then, having computed that, see whether there is any public interest, to use Judge Brown's language which justifies you in asking us to pay so much more money per year for our current, having in mind, as Judge Brown said, that the mere fact that the contract is unprofitable does not mean that it is discriminatory or illegal. The mere fact that it is unprofitable is far from establishing the fact that the public interest is injuriously affected. So that after a fair estimate is made of how this contract is working out you must consider, I submit, whether or not that shows that there is a public interest in view of all the other considerations which would justify your Board in setting it aside.

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Mr. Graustein: There are in the case two questions outstanding, one as to the old contract and the other the fairness of the new rate, assuming that the old contract has to be set aside. Mr. Dodge talked about the old contract not affecting the welfare of the people of Rhode Island. Now,

in the first place, I think the people of Rhode Island have expressed themselves in the public utilities act under which this Commission is now proceeding, which says if a rate is unjustly discriminatory the Commission shall set it aside. The Commission has investigated this contract. If it is not unjustly discriminatory I can not conceive of anything that can be. That is not a matter of argument but it is a matter of arithmetic. You can not have a 20,000,000 generating station and distributing system without having the capital of \$20,000,000 to build it with and you can not get \$20,000,000 without paying for hiring that money whether you borrow the money or get it in stock. If you borrow the money you have to pay interest on it; if you get it in stock you have to pay dividends. Now, the people of Rhode Island can not continue to be served efficiently if this company can not earn a return on its investment. In the real sense of the word that is just as much an item of cost as the cost of coal and, I think, it has been admitted by Mr. Dodge and by his client that we are not earning a fair return on our investment. I think it is axiomatic if we do not we can not serve the public of Rhode Island as we think they should be served. We would say \$50,000 is \$50,000 a year and if we had it we would be in a position to make that concession to the public. He says it does not affect the welfare. Is it to be assumed the public welfare is not affected at all as long as the public is able to pay the rates that will not only support the general business but Mr. Dodge's clients? It does not seem to me there can be any sense in any reasoning of that sort. Of course, it is true if we

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charged the entire interest of our investment to our other customers that then we could get along with Mr. Dodge's claim; but the whole theory of the act is to see that our charges including interest on our investment are fairly divided between our different customers, and then the next question is we made a mistake in making this contract. Of course, we did. I am not sure whether it is important, but assuming that it is important, all we did is we made a contract at a period when generating cost and cost of electrical equipment began to go up and we assumed they would come down again. It is surely not an abnormal human error to assume what goes up will come down. As a matter of fact, experience justifies that. We thought this rise in prices in 1916 and 1917 was a temporary thing due to the war and the war would sooner or later, shorter we hoped, be over and prices would come down again. A long term contract is normally based on current prices, and this was an abnormal thing which nobody could have foreseen. The thing was prices began to go up and have stabilized themselves on a higher level. That we could not foresee; that we did not foresee; I don't think any one could foresee them. As far as being careless is concerned, the whole contract was submitted to the Commission and you studied it. It was passed on by the Commission. That shows we used our best efforts to do business on a sound basis.

Mr. Chairman Bliss: The Commission particularly inquired whether you had protected yourself by your ability to render service to the public and whether the operation of this contract would

discriminate against your customers in Rhode Island, and we were assured by information that was at your disposal, that you had protected yourselves fully. It was only under that presentation of the matter that we approved the contract.

629 Mr. Graustein: That I remember clearly at the hearing. We had no incentive to mislead the Commission because we would be misleading ourselves. It is obvious that we did exercise our judgment the best we could and if we made a mistake in failing to anticipate something which had no precedent in my life, at least, and I assume no precedent in the lifetime of anybody sitting in this room. A business man can not be held to foresee a thing which is so abnormal as to have practically no precedent.

630 Now, then, as to the hardship on the Attleboro Company. I doubt that is seriously urged. If I felt that was an issue I should have introduced evidence; if I thought now it was an issue I should move to reopen, to show the Attleboro Company had paid dividends, 12 per cent dividends on the basis of the increased rate 101. It is also testified by Mr. Stanwood that the Narragansett is one of the efficient companies of the country. I don't think it can seriously be urged that the Attleboro is suffering in the least if they get electricity at its cost today from an efficient company like the Narragansett. Mr. Dodge has said the rate proposed to charge is not fair; I will come to that in a moment. The question whether the old contract is discriminatory—it seems to me that it must be clear that if the contract does not pay a fair return on the investment, still more if it appears

here it pays no return on the investment, it is discriminatory; if that is not discriminatory I can not understand what is discriminatory. The company is earning dividends but it is coming from other customers. If it is not discriminatory to make the other customers pay a return on the investment and let the Attleboro Company get its current without paying a return, I don't know what the word "discriminatory" means. Precedents are innumerable that such a situation is unsound, is just what the statute is aimed to prohibit. Now, I think that will cover that question.

There is the question of the fairness of the new rate. Mr. Dodge denounces it. We won't meet that criticism; we can not meet general denunciation, we can meet specific criticism. 632

Mr. Stanwood has made a very voluminous report on the subject in which there is, as far as I remember, only two specific criticisms—I will go over my list to see if there are any more—I mean that are figured in dollars and cents, for, after all, rates are a matter of dollars and cents, and if it is made in full detail and there is a criticism on it that criticism ought to be possible to bring it to light and not deal with it in general terms. There has been one criticism that we have charged in the cost of the transmission line from the substation to Attleboro to the State line some of the costs of the line outside Rhode Island. I think the evidence shows we have done that, and I think that the only way of logically—that is the only logical method of dealing with the problem, whether it results in an unfair charge or not I want to leave to the Commission with the comment that under 633

the contract the Attleboro Company continues to have electricity transmitted over the Seekonk line. As a matter of fact, it would be fair for the Attleboro Company to pay in some way the full cost, the full charge of that line. It does not, in fact, pay any return on that line under the contract and in this rate in question we get part of that back in that \$70,000; so I rather think those two things are not so, that the Narragansett Company is calling a line in Rhode Island more than it really cost; but on the other hand it is not getting anything for having procured the Seekonk Company to transmit into Massachusetts, nor is the Seekonk getting anything; and putting those together, and on the figures of Mr. Stanwood, and I don't think you will find the result is far off—the Narragansett Company is very willing and anxious to have the fullest investigation on that subject or any other detail of the rate—and if the rate is not right and the Commission does not feel it right they want it changed. They don't want to be unfair to the Attleboro Company, and they have tried to create a right basis of cost and that is similar to their own cost rates.

I will take up a few other criticisms of the rate, not so much that we insist upon the justice of this rate but because we want to show you we have tried to create a rate that has a fair cost basis. I think that the Attleboro Company, assuming it has a contract—not by giving effect—would not expect anything better than a rate based on cost. It has been urged that we charge 6 per cent for discounted bills; 7 per cent for money invested in coal; 6 per cent for interest during construction.

As I pointed out in cross examination, that is less than our average rate as our stock monney gives us 8 per cent and our cost a little under 5. An exhibit shows the money invested, stock in money is far off exhausting that need of money, so our average cost of money is much above those figures. I think it would be best if finance companies did not borrow money but took their current requirements out of their stock. Surely it can not be an objection if the company adopted a conservative practice. Mr. Dodge has said, gentlemen, that the new rate is unfair because it does not allow a difference between the wholesale and retail business. That, of course, is a misapprehension. The big cost in the retail business is in the distribution system, and here it plainly says no part of the distribution system is charged to this service except that which is actually used in this service.

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There is one other factor about this new rate. Take the worst Mr. Dodge says of it. Suppose it is unfair, it is perfectly open, if this rate went into effect tomorrow it is perfectly open to the Attleboro Company the day after tomorrow to come in here with specific objections to it and ask the Commission to consider this question, and the Commission will be bound to give them a consideration of it.

Another thing, a practical question, is if the Attleboro Company wanted to settle with the Narragansett Company on a fair rate we would not have bothered the Commission. I know the two companies and Mr. Dodge could sit down and agree on a fair rate. The real question that brings us here is the fact that the Attleboro Company

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wants to stand on its contract; it wants the other customers of the Narragansett Company to furnish for its use, without charge, their share of the \$20,000,000 electric system.

I do not like to leave the impression that we feel the rate is unfair and all these questions about the correctness of the new rate—these are really questions of detail on which we think we can demonstrate our position, and if we can not we would be very glad to be shown where we are wrong and we will change the rate to whatever is right.

One question more; Mr. Dodge referred to the demand of the company's system. He says we should figure the total output of electricity and not the primary demand. I can only say to that, as far as I know the electrical industry throughout the country distinguishes between primary and secondary electricity.

Mr. Dodge: I don't claim you are giving up the maximum. I said some consideration should be given to the secondary current as you did in your bills on the 1921 rate.

Mr. Graustein: I think the figures on the 1921 rate were based on arbitrary figures. The Attleboro Company was not charged on the basis of precise demand. However that may be, the demand is given in detail month by month in this schedule. It was made up on the basis of a primary demand, that is to say, the demand of those customers who had a right to continued service in case of breakdown. The exhibit shows that there actually was a breakdown and the output station during the breakdown was limited to substantially the primary demand. That is an unimportant fact be-

cause we know it is a thing which may happen. And this is to be remembered: in the testimony witnesses recited that they had never had their service interrupted; in other words, they have no right to complain because they are being charged for this primary current and they have gotten primary current uninterrupted on the occasion when the entire Narragansett plant was down.

One thing about the rate being unfair, that Mr. Dodge referred to, that is that one charge which is definitely left out, and there is no charge for working capital employed except in that one item of coal and discounted bills, but all other working capital employed there is no specific charge for, and there is no charge at all except so far as the allowance one mill for overhead and contingencies. The company has to buy all kinds of supplies and pay for labor. It has put its money out all the time and it is not paid in advance; it is paid in arrears; and there is no charge, as I say, no direct charge for that and no charge at all except so far as one mill will cover.

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Now, the question of public welfare: as I have said, if the company can be forced to render service for no return to one customer there is no reason it can not to another customer. We might have several people besides the Attleboro Company in here and each say their contract was not important enough to wreck the company. It seems to me the question is, it can not be necessary for the company to be ruined; and I think the public welfare is indicated by the fact that Exhibit 10 shows that pro-rating 1924 about \$300,000 already is lost on this contract. If it is not time to stop that loss I

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don't see why, and where you could not find a situation which called upon the Commission to exercise its powers to abrogate an unjust, unreasonable and discriminatory rate such as this is.

Mr. Chairman Bliss: You attach some value to this contract, don't you? Don't you think the Attleboro Company comes in here with a substantial standing as a result of that contract?

647 Mr. Graustein: I do, but I feel the Attleboro Company should be given the lowest rate we can justify and pay its share of the cost of the service. I think this Commission has before it all the rates which the Narragansett Company has in effect. I think that a comparison of those rates with these of the proposed rate will indicate that the company has made an effort to meet that condition and, as I said, the Narragansett Company is, and always has been, prepared to discuss all the details of the new rate with the Attleboro Company on that basis and if the Commission does not feel that the new rate proposed is fair, why, we want to know that. We have studied it very carefully, we think, and we have gotten a rate which is very close to the actual cost. I should say this rate does not meet in terms the cost. It is made in terms of so many dollars. That is to avoid any technical question as to whether a sliding scale rate might be too in-
648 definite. The old 101 rate, the first question of those terms—and in the hearing in the Federal Court I think it was Mr. Dodge who contended that the rate was illegal because it was too vague, so we put in this rate a specific number of dollars or cents for those figures for the month or year, or any time. We are just as anxious as they are to put them on a fair basis and take into consideration

the fact of the existence of the contract in doing that.

Mr. Chairman Bliss: What I am very interested in is the point that this contract was entered into with all the formalities of law required. What is a contract worth if the mere fact that a company does not earn its full return, if the Commission should step in, in a proper proceeding and abrogate the contract?

Mr. Graustein: I take it no contract can stand up if the rates fixed under it become such as the Commission would not be justified in approving, and Mr. Dodge says we must have the public welfare attended to. It seems to me and, I think, there is nothing in the decisions to the contrary, that in a case like this the public welfare is affected if it ever is because I say there is no return at all today. The contract fixes the details of the service and fixes a thousand and one things outside rates, and it is for the Commission always under the praiseworthy power of the Commission to set aside a contract. 650

Mr. Chairman Bliss: Suppose this contract figured one-half the return of 8 per cent., 4 per cent., would you say this Commission would have authority in this proceeding to order this company to pay the full 8 per cent.?

Mr. Graustein: Undoubtedly, I think the Commission would undoubtedly have that authority; if 4 per cent is so low that it would be its duty to do so, I think the Commission would be justified in taking into consideration past profits and future profits. In this case we have had losses, and anticipate future losses, but I think it is clear, both from the 651

interstate commerce decisions and decisions in various public utility States, that a contract like any other has got to pay a fair return. I think the Commission is justified in considering the past and the future, if there is a contract, but if it is convinced the contract does not pay a fair return then it is the duty of the utility and Commission to establish a rate which has a fair return.

653 Mr. Chairman Bliss: What is going to happen in the development of the power system in New England where contracts are involved if they are to be practically at the whim and mercy of the Commission where the generating plant is?

Mr. Graustein: Of course, if the subject comes to be of increasing interstate importance we may see a tribunal analogous to the Interstate Commerce Commission, but I feel sure of this that the tendency would be towards increasing the system and the equality of treatment of all customers. If a contract which gives a 4 per cent rate will stand then the Narragansett Company might be in a position to give half of its customers contracts, and the other half would be paying for two. Plainly it would be the duty of the Commission to abrogate such contracts, and it would be true that one contract would be good when two would be bad. This contract is of sufficient social importance so that the Commission has got to recognize its effect upon the prosperity of the company. 654 Mr. Dodge says the company is prosperous but the company's prosperity is nothing but the amount of money it takes from the consuming public; and I may say this for the Narragansett Company, that it has a very amiable record of rendering service at fair cost with no promoters'

profits; and if there ever was a case where the savings of a utility is likely to find its way back into the pockets of the public the Narragansett Company is the company where that will happen.

Mr. Chairman Bliss: They do not want to do it at the expense of the rights of customers.

Mr. Graustein: No; any customer who comes to the Narragansett Company to make a contract with it today, or six years ago it is all the same, for electricity at a fixed price, and it is well established that that contract can not stand if it gives him the preference. While it is true, it is a case where contract rates clash with public policy, but that public has been so thoroughly established and it has been so thoroughly established too, that it is superior to the contract when they clash, that there is no doubt about the utility and of the Commission to establish equality notwithstanding the contract, and when the contract is made as to—after the act is past—here is an act which says the Naragansett Company has got to render service on equal terms, and the terms they fix must be fair and must remain fair. Of course, under the interstate commerce law they might send you to jail for operating under a contract like this if it gets to be unfair. I know they are very stringent.

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Mr. Chairman Bliss: In this particular case your contract provided for certain things that seemed important to the Attleboro Company at the time you entered into it, for instance, the payment of \$1,750 maintenance of substation, and all those things are eliminated in this new rate.

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Mr. Graustein: That, after all, is just a matter of arithmetic. It is not necessary to wipe those

out. We could leave untouched everything excepting the rates. It is really immaterial whether we add \$1,750 on the rates or subtract it and leave it as a separate item, but it is really, as I said, a charge that we are dealing with, and we are leaving the obligation to render service and the physical conditions of the service unchanged.

659 Mr. Chairman Bliss: It would be possible, under your contention, for the company to enter into a contract with a company like the Attleboro Company and make the rate so that it would be apparent to them that within a few years they could show a loss then come before the Commission to set aside all the other burdens of that contract and set up a new one that would pay them a full return. Does not that put the company that is taking the current at a big disadvantage in dealing with you?

Mr. Graustein: No, because the contract is no more binding upon them than it is upon the seller. If the price gets up unduly high the purchaser can come in and can invoke the statute under the public utilities act just as the seller can.

Mr. Dodge: I never saw a case of that kind.

660 Mr. Graustein: I think that is so, but apart from that, if it could be foreseen by either party that the rate is going to be unduly low—the chances—as business men it should be foreseen by both, and their making the contract very likely would have been given with the intention of getting a special rebate to that customer. It is not likely that these statutes have provided for setting aside of proper contracts. It is deliberately and intentionally done in order to preserve equality of treatment, and the more serious the burden on a proper

contract the more important in the ordinary case is it to the public point of view to maintain equality of treatment.

Mr. Chairman Bliss: Are there any cases where companies enter into contracts of this kind where they do not show ordinary care and judgment under the circumstances? The commissions and courts have charged that up against the company entering into the contract and said the loss should be deducted from the capital return of the companies?

Mr. Graustein: There have been a great many cases of this sort. I don't remember a single case that came to that conclusion. There is a case there which Mr. Dodge was quoting where a decision favorable to the utility was sent down because, as I consider the cases, proper proceedings had not been taken by the Commission, just as Judge Brown sent us back here. (Quotes from the decision.) In other words, we had proceeded before under what was, I think and I know, was the very general practice of all commissions to assume that the mere filing of the rate would abrogate a contract. The requirement of a contract is a matter which is very new in the decisions. It would really receive emphasis only in decisions last year, in the Supreme Court of the United States, and one in Virginia or West Virginia. Before that there had only been two scattering decisions and all the other decisions had been in effect that you could not abrogate a contract, and that is the effect of the interstate commerce case. A railroad makes its rates by filing its schedules. * * * I should like to file with the Commission subsequently a request for findings

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and if the Commission would like it, a brief in regard to these authorities because there are a great many which support the power of the Commission.

Mr. Chairman Bliss: We should be very glad to have them, and very glad to have anything that Mr. Dodge might desire to file with us.

665 Mr. Dodge: I disagree with a great many of the propositions of law laid down by Mr. Graustein and, among those things, about the 4 per cent. May I call your attention to that case which I find happens to be in the volume I took out for that purpose? That is the case of Wichita to which I referred, in the Supreme Court, Kansas, 214 Pacific Reporter 797, Pub. Utilities Reports, Annotated 1923-D, page 593.

Mr. Chairman Bliss: With the understanding that counsel will be permitted to file requests for findings, and such authorities as they may desire the matter will be considered closed. We have entered an order suspending the effect of the new rate for two months from the 14th.

Exhibit No. 1

667

BASIS FOR SCHEDULE R. I. P. U. C. No. 125.

On the accompanying sheet entitled "Generating Plant" data will be found the following:

(a) The Book Value of the "Generating Plant". The "Generating Plant" in this case means the present generating station of the Narragansett Company, the coal and oil handling apparatus and equipment located at such generating station, and the land allocated to such property. It does not mean the 66,000 volt sub-station, the 22,000 volt sub-station or land allocated to such sub-stations.

(b) The Reserve for Depreciation applicable to the "Generating Plant". 668

(c) The Depreciated Book Value of the "Generating Plant".

(d) The Peak Primary Load on the "Generating Plant".

(e) The Unit Cost of the "Generating Plant".

The Book Value of the "Generating Plant" contains the book value of the "Generating Plant" as of the first day of each month. The values for the first two months are those shown on our books, plus storehouse and office building land. This land, although used in conjunction with our generating station, was not carried on our books as a part of our "Generating Plant" until March 31st. For March 1st we have added to the value determined as above for February 1st, \$758,000 on account of the new switchhouse; for June 1st, \$125,000 was added to the previous month's value on account of the switchhouse; for December 1st, \$1,050,000 was 669

added to the previous month's value on account of a new boiler house extension. On the first of each month from and including March 1st, \$2,250 was added to the previous month's value. This is estimated to cover the ordinary miscellaneous small additions to our "Generating Plant".

The Reserve for Depreciation is that part of the Reserve for Depreciation carried on our books in respect to the generating and delivery plant which we feel is applicable to the "Generating Plant", the book values of which are set forth in the first column and is arrived at in the following manner:

671 For the first three months we use such part of the reserve herein mentioned as is equal to the ratio between the total book value of our generating and delivery plant and the book values of our "Generating Plant" as set forth in column 1. The reserve for each succeeding month is established by adding to the reserve for the first day of the preceding month one-twelfth part of 3 percentum of the depreciated value of the "Generating Plant" for the first day of the preceding month.

The Depreciated Book Value of the "Generating Plant" is arrived at by deducting the Reserve for Depreciation contained in the second column from the Book Values of the "Generating Plant" contained in the first column.

672 The peak primary load is the maximum fifteen minute peak of primary power measured at the East Providence, Admiral Street, Elmwood and Elm Street Sub-Stations as to all electricity which passes through such sub-stations and at the "Generating Plant" as to all electricity which does not pass through such sub-stations. In preparing these

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figures we have assumed that there will be no increase in the primary load after March 1st until sometime in December, possibly between the 15th and 25th.

The unit cost of the "Generating Plant" is obtained by dividing the depreciated book value of the "Generating Plant" by the peak primary load.

The average unit cost of the "Generating Plant" for the year obtained by dividing the sum of the unit cost for each month by twelve, is \$89.15. Multiplying this figure by $13\frac{1}{4}\%$, covering an 8% return, 3% depreciation and $21\frac{1}{4}\%$ for taxes and insurance not including, however, any Federal or State taxes, equals \$11.81, which divided by 95.5%, to cover losses from the sub-station to the point of delivery at the State Line, equals \$12.37, this sum being that part of the annual investment charge necessary to cover the return, depreciation and taxes herein set forth on the Depreciated Book Value of the "Generating Plant".

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Public Utilities Commission
State of Rhode Island

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*Exhibit No. 1***"GENERATING PLANT" DATA.**

1924	Book Value of "Generat- ing Plant"	Reserve for Depreciation	Depreciated Book Value of "Generat- ing Plant"	Peak Primary Load	Unit Cost
January 1st	\$5,699,317.47	\$693,401.68	\$5,005,915.79	63,970 KW	\$78.25
February 1st	5,719,572.96	705,265.38	5,014,307.58	63,970 "	78.39
March 1st	6,479,822.96	716,804.05	5,763,018.91	64,615 "	89.19
April 1st	6,482,072.96	731,211.60	5,750,861.36	64,615 "	89.00
May 1st	6,484,322.96	745,588.75	5,738,734.21	64,615 "	88.81
June 1st	6,611,572.96	759,935.59	5,851,637.37	64,615 "	90.56
July 1st	6,613,822.96	774,564.68	5,839,258.28	64,615 "	90.37
August 1st	6,616,072.96	789,162.83	5,826,910.13	64,615 "	90.18
September 1st	6,618,322.96	803,730.11	5,814,592.85	64,615 "	89.99
October 1st	6,620,572.96	818,266.59	5,802,306.37	64,615 "	89.80
November 1st	6,622,822.96	832,772.36	5,790,050.60	64,615 "	89.61
December 1st	7,675,072.96	847,247.49	6,827,825.47	64,615 "	105.67

Average Unit Cost \$89.15

\$89.15 times $13\frac{1}{4}\%$ equals \$11.81

\$11.81 divided by 95.5% equals \$12.37

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In ascertaining that part of our annual investment charge having relation to the transformation and transmission of electricity it seems desirable to give particular attention to the investment in transformation and transmission equipment and apparatus necessary or useful in respect to the electricity to be delivered to the Attleboro Steam & Electric Co. The accompanying data, therefore, is in relation to the supply of electricity to such Company.

Electricity for the Attleboro Company is generated at 11,000 volts and transformed from such voltage to 22,000 volts by means of transformers located near the "Generating Plant". Such electricity is then transmitted to the East Providence Sub-Station by means of underground cables, thence by underground cables to a riser approximately 1,670 feet from such sub-station, and from such riser by aerial line to a point on the State Line between Rhode Island and Massachusetts where such aerial line crosses the State Line. From such point on the State Line electricity is transmitted over lines owned by the Seekonk Electric Company and the Attleboro Steam & Electric Company to a location near the generating plant of the Attleboro Company.

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Electricity is transformed before transmission to the East Providence Sub-Station by means of 3-5,000 K.V.A. transformers located near the "Generating Plant" and is transmitted to such sub-station by means of five cables which require approximately 60,975 feet of duct. The values of these transformers, cables and ducts are shown on the sheet entitled "Transformation and Transmission Data".

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The cost of the aerial line is arrived at by taking the total cost of the line from the sub-station to

the vicinity of the Attleboro Company's generating station and deducting therefrom the amounts paid by the Attleboro Steam & Electric Company and the Seekonk Electric Company for that portion of the line lying in their respective territories.

The value of the transformers, cables and ducts is decreased 12.16% to allow for depreciation, such percentage decrease in value being arrived at by dividing the Reserve for Depreciation for January 1st as shown on the sheet entitled "Generating Plant" Data by the Book Value of the "Generating Plant" at the same date.

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The sub-station values are those shown on our books as of March 1, 1924. For the purpose of the present calculations such values are decreased by the value of the land, building and equipment chargeable to street lighting and further decreased to allow for depreciation by the same percentage used in depreciating the cables, transformers and ducts.

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The depreciated value of the transformers, cables and ducts would thus amount to \$150,752.82 and that of the sub-station building, land and equipment minus any portion chargeable to street lighting, \$103,512.53. The estimated load at this sub-station is 13,000 kilowatts of which 220 kilowatts is chargeable to street lighting. In arriving at the investment per kilowatt in transformers, cables and ducts we have divided the total investment in such property by 13,000. In arriving at the investment per kilowatt in sub-stations land, structure and equipment, we have divided the investment in such property by 12,780. The kilowatt cost of transformers, cables and ducts thus amounts to \$11.60 and of sub-station land, structure and equipment, \$8.10. These amounts multiplied by 13¼% total \$2.61, which divided by 95.5% to cover

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drop between the sub-station and the point of delivery equals \$2.73, this sum being that part of the annual investment charge necessary to cover an 8% return, depreciation and taxes not including, however, any Federal or State taxes on the depreciated book value of transformers, cables, ducts and sub-station land, structure and equipment as herein set forth.

The value of the aerial line determined in the manner set forth above is \$73,886.23. This value is depreciated by taking a proportionate part of a reserve covering transmission and distribution lines and other equipment equal to the ratio between \$73,886.23 and the value of such transmission and distribution lines and other equipment. This part of such reserve is equal to \$10,221.84. Deducting this from the book value of the line we obtain a net depreciated value of \$63,664.39, which divided by the Attleboro Company's peak load; namely, 3,840 kilowatts measured at the East Providence Sub-Station, gives a kilowatt cost of \$16.58. This multiplied by 15% to cover an 8% return, depreciation, taxes and maintenance, equals \$2.49 which divided by 95.5% to cover loss between the sub-station and the point of delivery, equals \$2.61, this sum being that part of the annual investment charge necessary to cover such return, depreciation and taxes not including, however, any Federal or State taxes on the depreciated book value of the transmission line from the East Providence Sub-Station to the point of delivery at the State Line, as herein set forth and to provide for the maintenance of such line.

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TRANSFORMATION AND TRANSMISSION DATA.

A	3—5,000 K.V.A. Transformers	X 1621	\$16,230.84	
		X 1586	25,378.95	
	5—Cables	X 1514	14,902.03	
		X 1586	43,519.91	
		X 1621	22,687.65	
		X 2540	18,415.18	
	Duct—60,975 feet @ 50c		30,487.50	
			<u>\$171,622.06</u>	
	C Dep.	20,869.24		\$150,752.82 divided by 13,000 equals \$11.60 times 13¼% equals \$1.54
D	Sub-Station, East Providence:			
	Land Book Value 3/1/24		\$1,793.15	
	Structure, Book Value 3/1/24		28,487.58	
	Equipment, " " "		104,447.92	
			<u>\$134,728.65</u>	
689	Less Street Lighting, Land, Building & Equipment		16,886.52	
			<u>\$117,842.13</u>	
	Dep.	14,329.60		\$103,512.53 divided by 12,780 equals \$8.10 times 13¼% = 1.07 \$2.61
				\$2.61 divided by 95.5% = \$2.73
	Estimated Total Load	13,000 K.W.		
	Street Lighting Demand	220 "		
		<u>12,780 K.W.</u>		
	Attleboro Load	3,840 K.W.		
B	Transmission Line X1595, N. E. L. Co. share only		\$73,886.23	
		Dep.	<u>10,221.84</u>	
				\$63,664.39 divided by 3,840 KW equals \$16.58 per KW \$16.58 times 15% = \$2.49 \$2.49 divided by 95.5% = \$2.61

690

Received May 22, 1924
Public Utilities Commission
State of Rhode Island

Exhibit No. 1

691

The foregoing data shows the necessity of including in the annual investment charge per kilowatt of demand the following items:

On account of generating plant	\$12.37
On account of transformers, cables and sub-stations	2.73
On account of aerial transmission line	2.61
	<hr/>
	\$17.71

Of the first two items totalling \$15.10, $\frac{8}{13.25}$ or \$9.117 is the amount of the 8% return contained in the investment charge per kilowatt of demand.

692

Of the last item; namely, \$2.61, $\frac{8}{15}$ or \$1.386 is the amount of the 8% return contained in the investment charge per kilowatt of demand. The sum of these two items equals \$10.503. In order that this amount may be left after paying Federal Income Taxes of $12\frac{1}{2}\%$, it will be necessary to receive \$1.50 more. This added to the \$17.71 set forth above amounts to \$19.21, which fully justifies the \$19.00 investment charge contained in our Schedule No. 125.

Received May 22, 1924
Public Utilities Commission
State of Rhode Island

693

694

Exhibit No. 1

In ascertaining the electricity charge we have computed the cost of generating electricity at our "Generating Plant" and delivering the same to the East Providence, Admiral Street, Elmwood and Elm Street Sub-Stations and dividing the same by the total number of kilowatt hours sent out from the above mentioned sub-stations and from the "Generating Plant" as to such electricity as does not pass through any of the above mentioned sub-stations.

695

Such unit generating and delivery cost is ascertained for each month and there is added thereto one mill to cover such of the general expenses as should be charged to electricity delivered under this schedule and which have not otherwise been given consideration in the schedule as well as to provide for contingencies. The total unit generating and delivery cost thus obtained is multiplied by the number of kilowatt hours delivered to the Attleboro Company each month to obtain the total generating and delivery cost each month of the electricity delivered to the Attleboro Company. The total cost for the twelve months is then divided by the total number of kilowatt hours delivered to the Attleboro Company during the year. These figures are for the calendar year 1923. The generating and delivery cost includes the following:

696

Labor

Generating Station Superintendence
Boiler Room, Turbine Room, Electrical &
Miscellaneous Labor
Superintendence & Labor at the Admiral Street,
East Providence and Elmwood Sub-Station

Exhibit No. 1

697

Superintendence and Labor on lines between
the Generating Station and above mentioned
sub-stations

Fuel

Handling & Storage Charges on Fuel

Interest on Fuel Stock

Insurance on Fuel

Fuel Losses

Ash Handling

Water

Lubricants

Supplies & Miscellaneous Expenses at the Gen- 698
erating Station, Admiral Street, Elmwood &
East Providence Sub-Stations and for Trans-
mission Lines

Maintenance, Repairs at the Generating Plant
and each of the above mentioned sub-stations.

Maintenance & Repairs of Transmission Facil-
ities between the Generating Plant and the
various sub-stations herein enumerated

Miscellaneous Storehouse Expense

Purchasing Expense

Accounting Department Expense

Automobile Expense

Liability Insurance

Interest on Invoices paid in advance

Current and Electricity Purchased 699

Received

May 22, 1924

Public Utilities Commission

State of Rhode Island

700

Exhibit No. 1

The generating and delivery cost of the electricity delivered to the Attleboro Company for the year 1923 ascertained as above set forth is \$.0075348. This divided by 98% to cover the losses between the East Providence Sub-Station and the point of delivery at the State Line gives us a net cost of electricity at such point of delivery of \$.0076886.

701

It is estimated that fuel during 1924 will cost 7 cents more per barrel than during 1923. This, on the basis of 292 kilowatt hours per barrel of fuel at our generating station, would mean an increase per kilowatt hour at such generating station of \$.00024, which divided by 95% to cover losses between the generating station and the point of delivery at the State Line, gives us an increase per kilowatt hour of \$.00025 due to increased cost of fuel. This added to the unit cost above set forth, gives a total unit cost at the State Line of \$.0079386.

Received

May 22, 1924

Public Utilities Commission
State of Rhode Island

702

Exhibit No. 1

703

GENERATING AND DELIVERY COST

1923	K.W.H. Delivered	Unit Price	Total Cost	
January	934,200	.0070293	\$6,566.77	
February	829,100	.0069171	5,734.97	
March	872,500	.0072709	6,343.86	
April	794,400	.0083663	6,646.19	
May	795,800	.0083186	6,619.94	
June	733,800	.0073047	5,360.19	
July	704,100	.0071113	5,007.07	
August	758,500	.0070595	5,354.63	
September	783,100	.0074808	5,858.21	
October	979,500	.0075158	7,361.73	
November	930,500	.0075019	6,980.52	
December	1,056,100	.008339	8,806.82	704
	<u>10,171,600</u>		<u>\$76,640.90</u>	

\$76,640.90 divided by 10,171,600 equals \$.0075348

\$.0075348 divided by 98% equals \$.0076886

Increase due to fuel \$.00024 at Generating Station

\$2.00024 divided by 95% equals \$.00025 increase
at point of delivery

\$.0076886

.00025

\$.0079386

Received

May 22, 1924

705

Public Utilities Commission
State of Rhode Island

706

Exhibit No. 1

The sheet entitled "Details of General Expense for 1923" contains the several accounts of our general expense for 1923. Those items which do not enter into the computations upon which this schedule is based, except through the one mill per kilowatt hour addition to the generating and delivery cost, are designated by an asterisk.

Received

May 22, 1924

Public Utilities Commission
State of Rhode Island

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708

Exhibit No. 1

709

DETAILS OF GENERAL EXPENSE FOR 1923.

	Cost in Mills For KWH Sold	
	This Year	This Year
*Salaries of General Officers	\$59,493.63	.181
*Directors' Fees	4,560.00	.014
Salaries, Acctg. Dept. & Gen. Of- ficers' Clks.	25,706.57	.078
*Stationery & Printing	5,665.48	.017
*Postage	2,421.07	.007
*Telephones & Telegrams	2,055.42	.006
*Rent	6,787.30	.021
*Sundry Expense in General Office	3,834.89	.012
*Miscellaneous General Expense	54,528.60	.166
*Law Expense—General	8,384.49	.025
Insurance—Liability	11,831.15	.036
Insurance—Fire	8,729.22	.027
*Insurance—Use & Occupancy	1,351.26	.004
*Insurance—Fidelity	208.93	.001
*Taxes—Franchise	15,128.66	.046
Taxes—Income, Federal	243,208.00	.739
*Taxes—State	47,322.76	.144
Taxes—Town & City	189,643.79	.577
*Taxes—Federal Capital Stock	20,721.50	.063
Duplicate Electric Charges	13,024.15	.040
*Property Damage	909.78	.003
Purchasing Dept., Salaries and Expense	11,236.15	.034
Storehouse Salaries & Expense	57,715.25	.175
*Repairs, Bldgs., Shop, Store- house & Garage	3,465.52	.011
*Labor & Expense, Heating Plant	9,980.67	.030
Automobile Expense	43,102.73	.131
*Uncollectible Accounts	10,127.15	.031
*Donations & Charities	1,575.00	.005
*Welfare Work	22,036.13	.067
*Sick, Injured and Pensioned Em- ployees	1,387.98	.004
*General Advertising	3,639.38	.011
Total General Expense	\$863,734.31	2.626
Electricity Sold in K.W.H.	328,889,955	
Total *Items	\$285,585.60	.869
Total Other Items	591,172.86	1.797

In above totals the credit item "Duplicate Elec-
tric Charges" is disregarded.

712

Exhibit No. 1

Copy

[Attached to Exhibit No. V.]

May 21, 1924.

Attleboro Steam & Electric Co.,
60 Congress Street,
Boston, Mass.

Gentlemen :

713 We have received your letter of May 8th in which you state that your Attorney, Mr. Dodge, is of the opinion that you should not furnish us certain details of Mr. Stanwood's report to you, which we previously requested. We regret exceedingly that he has taken this position.

714 This report has to do entirely with figures obtained from our books and records by Mr. Stanwood. The details which we desired had relation only to certain calculations and assumptions made by Mr. Stanwood. We have felt all along that to approach this matter openly would be to our mutual benefit and to this end have given your Company and its Agents full access to our books and records. We intend to continue this policy and are, therefore, mailing you, herewith, copy of our letter of today to the Public Utilities Commission containing detailed data upon which our schedule R. I. P. U. C. No. 125 is based.

We desire further to state that our records and books of accounts are open to you at any time. We would respectfully suggest that you have your auditors check the enclosed data and obtain any addi-

Exhibit No. 1

715

tional information which you may desire from our books and records as soon as convenient, so that the proceedings before the Public Utilities Commission may not be unduly delayed.

Very truly yours,

NARRAGANSETT ELECTRIC LIGHTING CO.

Asst. Secretary.

JEG/K

Enc.

(Stamped)

Received

May 22, 1924

716

Public Utilities Commission

State of Rhode Island

717

718

Exhibit No. 2

May 29, 1924.

Public Utilities Commission,
State House,
Providence, R. I.

Dear Sirs :

We are sending you, herewith, calculations showing the cost of supplying the Attleboro Company with electricity for the years 1923 and 1924: also the net receipts under Schedule No. 68 for both years. Where actual figures were not available estimates have been used.

719 These figures show that Schedule No. 68 would produce in 1923 \$45,611.33 and in 1924 \$50,918.37 less than the cost of supplying the Attleboro Company with electricity.

Very truly yours,

JESSE E. GRAY,
Asst. Secretary.

JEG/K
Encs.

Received
May 31, 1924
Public Utilities Commission
State of Rhode Island

720

241

Exhibit No. 2

721

May 29, 1924

Attleboro Steam & Electric Company
60 Congress Street
Boston, Mass.

Gentlemen :

Please find enclosed, herewith, copy of letter this day mailed to the Public Utilities Commission of Rhode Island, together with the enclosure mentioned therein.

Very truly yours,

Assistant Secretary 722

JEG/K
Enclosures

723

**RESULT OF SELLING ELECTRICITY
UNDER SCHEDULE No. 68**

During the year 1923, 10,171,600 kilowatt hours were delivered to the Attleboro Company as measured by meters located at our East Providence Sub-Station. Allowing for a 7% loss between these meters and the meters located at the Attleboro Company's plant would indicate meter readings at the latter location of 9,459,598 kilowatt hours. Under Schedule No. 68 the price per kilowatt hour as measured by such meters is \$.00857 plus or minus \$.000085 for each 10 cent increase or decrease in the price of coal above or below \$3.50 per gross ton. We estimate that coal under contract would have cost \$6.30 a ton alongside our station for the calendar year 1923 which means an addition to the base price of \$.00238 per kilowatt hour and a billing price of \$.01095 per kilowatt hour. The total charge for electricity delivered during 1923 at this price amounts to \$103,582.60.

Under the provisions of our contract with the Attleboro Company the Narragansett Company pays annually to the Attleboro Company \$1,750.00 in respect to sub-station operation; \$2,929.50 in respect to a transmission line and to the Seekonk Electric Company \$1,761.75 in respect to a transmission line. The total of these items, \$6,441.25, should be deducted from the total charge for electricity delivered during 1923, in order to obtain the net amount retained by the Narragansett Company for such electricity. The amount thus determined is \$97,141.35.

The average unit generating and delivery cost to the Narragansett Company of this electricity is

shown by the figures which we submitted to you on May 21st and amounts to \$.0075348 per kilowatt hour. This cost multiplied by the number of kilowatt hours delivered as measured at the East Providence Sub-Station gives a total cost of \$76,640.90. Deducting this amount from the net receipts leaves \$20,500.45 to cover all costs other than generating and delivery cost.

The average depreciated unit cost of our "Generating Plant" for 1923 was ascertained in the same manner as were our figures for 1924 which accompanied our letter to you of May 21st (using actual costs, however, in place of estimated costs) and amounted to \$88.81 per kilowatt. The details of these costs are shown on the accompanying schedule entitled "Generating Plant' Data for 1923". 728

Annually in the month of December we determine the load on each of the feeders leading from our several sub-stations. In 1922 while making such determination on December 20th from 4:15 to 4:30 P. M. we observed the Attleboro Company's load to be 3,600 K. W. at the East Providence Sub-Station. This would be the peak load which would be used in our calculations and would hold until a higher peak load was found. Multiplying the unit cost of the "Generating Plant", \$88.81, by the peak primary load, 3,600 K. W., gives us \$319,716.00 as the value of that part of the "Generating Plant" properly chargeable to the generation of electricity for the Attleboro Company. Depreciation, taxes and insurance at $5\frac{1}{4}\%$ on the above amount equals \$16,785.09. 729

The depreciated unit cost of the cables, transformers and ducts used in conjunction with the East Providence Sub-Station is \$11.82. The depreciated

730

Exhibit No. 2

unit cost of the East Providence Sub-Station minus street lighting is \$7.03. The sum of these unit costs amounts to \$18.85. To obtain the cost of that part of the above mentioned cables, transformers, ducts and sub-station which should be properly allocated to the supplying of electricity to the Attleboro Company we have multiplied the depreciated unit cost of \$18.85 by 3,600, the Attleboro Company's peak load. The cost thus obtained amounts to \$67,860.00 which multiplied by $5\frac{1}{4}\%$ to cover depreciation, taxes and insurance makes \$3,562.65.

731

The depreciated value of the transmission line from the East Providence Sub-Station to the State Line is \$63,981.96 which is all chargeable to the supplying of electricity to the Attleboro Company. Multiplying this amount by 7% to cover maintenance, depreciation and taxes equals \$4,478.74. The total of these last three items, \$16,785.09, \$3,562.65 and \$4,478.74 is \$24,826.48. If we deduct from this amount \$20,500.45, such amount being the net receipts over and above the generating and delivery cost of electricity, we show a loss of \$4,326.03 before giving any consideration to return.

732

Using the 1923 load factor for 1924 with a peak of 3,840 K. W. the kilowatt hours delivered to the Attleboro Company as measured at East Providence for the year 1924 would be 10,800,000. Allowing a 7% loss between the East Providence Sub-Station and the metering point at Attleboro would indicate that 10,044,000 kilowatt hours would be measured by the meters at Attleboro. Using the same coal cost as was used in the calculation for 1923, this electricity would be sold to the Attleboro Company at \$109,981.80. The payments to the At-

Attleboro Company and the Seekonk Company in respect to the sub-station and transmission lines would be the same amount as those made during the previous year; namely, \$6,441.25. Deducting this amount from the above mentioned \$109,981.80 would make the net receipts of the Narragansett Company on account of the electricity delivered to the Attleboro Company \$103,540.55.

The average unit generating and delivery cost to the Narragansett Company of this electricity is shown by the figures which we submitted to you in May and amounts to \$.0079386 per kilowatt hour. This cost multiplied by the number of kilowatt hours delivered as measured at the East Providence Sub-Station gives a total cost of \$84,021.84. Deducting this amount from the net receipts leaves \$19,518.71 to cover all costs other than generating and delivery costs.

734

The average depreciated unit cost of the "Generating Plant" for 1924 was \$89.15 as shown in detail by figures recently submitted to you. This cost multiplied by 3,840, the peak primary load of the Attleboro Company as ascertained by curve drawing demand meter at the East Providence Sub-Station, gives us \$342,336.00 as the value of that part of the "Generating Plant" properly chargeable to the generation of electricity for the Attleboro Company. Depreciation, taxes and insurance at 5¼% on the above amount equals \$17,972.64.

735

The depreciated unit cost of the cables, transformers and ducts used in conjunction with the East Providence Sub-Station is \$11.60. The depreciated unit cost of the East Providence Sub-Station minus street lighting is \$8.10. The sum of these unit costs

Exhibit No. 2

736

amounts to \$19.70. To obtain the cost of that part of the above mentioned cables, transformers, ducts and sub-station which should properly be allocated to the supplying of electricity to the Attleboro Company we have multiplied the depreciated unit cost of \$19.70 by 3,840, the Attleboro Company's peak load. The cost thus obtained amounts to \$75,648.00 which multiplied by 5¼% to cover depreciation, taxes and insurance makes \$3,971.52.

737

The depreciated value of the transmission line from the East Providence Sub-Station to the State Line is \$63,664.39 which is all chargeable to the supplying of electricity to the Attleboro Company. Multiplying this amount by 7% to cover maintenance, depreciation and taxes equals \$4,456.50. The total of these last three items, \$17,972.64, \$3,971.52 and \$4,456.50 is \$26,400.66. If we deduct from this amount \$19,518.71, such amount being the net receipts over and above the generating and delivery cost of electricity, we show a loss of \$6,881.95 before giving any consideration to return.

738

In the above figures which show a loss under Schedule No. 68 for 1923 of \$4,326.03 and for 1924 of \$6,881.95 the cost of capital was omitted. Correcting the above figures to allow for such cost (see note) by adding thereto the cost of capital as shown on the accompanying sheet entitled "Depreciated Value of Property Allocated to the Attleboro Company" shows that under Schedule No. 68 the receipts for 1923 will be \$45,611.33 and for 1924, \$50,918.37 less than the cost of manufacturing and delivering electricity to the Attleboro Company.

In the foregoing calculations in order to determine the losses as above to the Narragansett Com-

Exhibit No. 2

739

pany for the years 1923 and 1924 under Schedule No. 68 it has been necessary to estimate what the cost of coal would have been during both of these years had the Narragansett Company been purchasing coal under contract. For this purpose we have estimated the cost to be \$6.30 per gross ton alongside our dock. Should we have been able to purchase coal under contract at a lower figure than herein used, the loss under this schedule would have been greater than those shown herein.

740

741

Exhibit No. 2

"GENERATING PLANT" DATA

	Book Value of "Generat- ing Plant"	Reserve for Depreciation	Depreciated Book Value of "Generat- ing Plant"	Peak Primary Load	Unit Cost
1923					
January 1st	\$5,487,949.73	\$572,078.24	\$4,915,871.49	55,000 KW	\$89.38
February 1st	5,497,975.30	584,520.70	4,913,454.60	55,000 "	89.34
March 1st	5,501,592.72	596,873.46	4,904,719.26	55,000 "	89.18
April 1st	5,583,826.27	610,384.24	4,973,442.03	55,300 "	89.94
May 1st	5,598,459.98	623,108.55	4,975,351.43	55,300 "	89.97
June 1st	5,607,790.82	609,430.49	4,998,360.33	55,300 "	90.39
July 1st	5,627,291.12	622,328.47	5,004,962.65	55,300 "	90.51
August 1st	5,629,352.20	637,931.04	4,991,421.16	55,300 "	90.26
September 1st	5,626,089.14	646,501.91	4,979,587.23	55,300 "	90.05
October 1st	5,624,050.27	659,084.69	4,964,965.58	55,300 "	89.78
November 1st	5,626,123.95	671,041.67	4,955,082.28	55,300 "	89.60
December 1st	5,628,876.60	682,790.30	4,946,086.30	63,970 "	77.32

Average Unit Cost \$88.81

\$88.81 times $13\frac{1}{4}\%$ equals \$11.77

\$11.77 divided by 95.5% equals \$12.32

Exhibit No. 2

745

DEPRECIATED VALUE OF PROPERTY AL-
LOCATED TO THE ATTLEBORO COMPANY

	1923	1924	
Generating Plant	\$319,716.00	\$342,336.00	
Cables, Transformers & Ducts	42,552.00	44,544.00	
East Providence Sub- Station	25,508.00	31,104.00	
Transmission Line	63,981.96	63,664.39	
	<u>\$451,557.96</u>	<u>\$481,648.39</u>	
	.08	.08	
Net Return	<u>\$36,124.63</u>	<u>\$38,531.87</u>	746

Dividing the above net return by $87\frac{1}{2}\%$ to allow for $12\frac{1}{2}\%$ income tax gives us the cost of capital, which for 1923 equals \$41,285.30 and for 1924 equals \$44,036.42.

747

748

*Exhibit No. 2*TRANSFORMATION AND TRANSMISSION
DATA

3—5,000 K.V.A. Transformers	X 1621	\$16,230.84
	X 1586	25,378.95
5—Cables	X 1514	14,902.03
	X 1586	43,519.91
	X 1621	22,687.65
	X 2540	18,415.18
Duct—60,975 feet @ 50c		30,487.50

\$171,622.06

Less Depreciation

17,902.59

749 \$153,719.47 divided by 13,000 equals \$11.82 times
 13¼% equals \$1.57

Sub-Station, East Providence

Land, 1/1/23	\$1,793.15
Structure, 1/1/23	25,757.05
Equipment, 1/1/23	89,657.24

\$117,207.44

Less Street Lighting 16,842.13

\$100,365.31

Less Depreciation 10,459.94

\$89,905.37

\$89,905.37 divided by 12,780 equals \$7.03 times
 15% = 105

750 1.57
 1.05

2.62 times 95.5% equals \$2.74

Transmission Line \$73,886.23

Less Depreciation 9,904.27

\$63,981.96 divided by 3,-

600 K.W. = \$17.77 per K.W.

\$16.58 times 15% = \$2.67

\$2.67 divided by 95.5% = \$2.80

Exhibit No. 3

751

(Copy)

R. I. P. U. C. No. 125

Cancelling R. I. P. U. C. Nos. 68 & 101

**NARRAGANSETT ELECTRIC LIGHTING
COMPANY****ELECTRIC LIGHTING CO. RATE N****CHARACTER OF SERVICE**

Electricity will be supplied under this rate to Electric Lighting Companies for use by them or for sale to their customers. Such electricity will be delivered in the form of 3 phase, 60 cycle, alternating current at the voltage at which it is transmitted to the point of delivery, which point of delivery shall be such location as may be mutually agreed upon provided, however, that in all cases where the customer is located without the State of Rhode Island, such location shall be at the Rhode Island State Line. Meters for registering the current delivered and for the determination of the maximum taking shall be located at the point of delivery, unless some other location may be mutually agreed to, in which case the necessary adjustment shall be made in the meter readings to ascertain the current delivered and the maximum taking as of the point of delivery.

752

753

RATE

Demand in Kilowatts	Annual Invest- ment Charge per Kilowatt of Demand	Electricity Charge Per Kilo- watt Hour
3,000 or over	\$19.00	8 mills

754

*Exhibit No. 3***TERM OF CONTRACT**

One year or over.

BILLS

Bills shall be rendered monthly for one-twelfth part of the annual investment charge and for electricity delivered during the previous month and shall be due and payable within fifteen days of rendition.

STANDARD CONTRACT RIDERS AND TERMS AND CONDITIONS.

755

The Company's Standard Contract Riders and Terms and Conditions on file from time to time with the Public Utilities Commission, where not inconsistent herewith or otherwise mutually agreed, are made a part hereof.

Effective on all electricity delivered after 12 o'clock midnight June 14, 1924.

756

Exhibit No. 4

757

May 14th, 1917.

Public Utilities Commsision,
Providence, R. I.

Attention William C. Bliss, Esq., Chairman.

Dear Sirs:

We are handing you herewith, R. I. P. U. C. No. 68, covering special rate for electricity to be sold to the Attleboro Steam & Electric Company at the State Line between Rhode Island and Massachusetts.

This contract is made for a period of twenty (20) years and covers the purchase of all electricity required by the Attleboro Steam & Electric Company for its own uses and for sale in the City of Attleboro and adjacent territory.

758

As the Narragansett Electric Lighting Company does not have rights to build and maintain transmission lines in the State of Massachusetts, it is necessary that lines be furnished by Massachusetts corporations. Therefore, the contract covers the furnishing of a line in the Town of Seekonk, Massachusetts, by the Seekonk Electric Company, and in the City of Attleboro by the Attleboro Steam & Electric Company. Under the terms of the contract the Narragansett Electric Lighting Company pays to the Attleboro Steam & Electric Company fifteen per cent. (15%) of the original cost of said transmission line, and the Attleboro Steam & Electric Company repairs and maintains the same in proper condition to transmit the current contracted for. The Narragansett Electric Lighting Company pays

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to the Seekonk Electric Company fifteen per cent. (15%) upon the original cost of the transmission line, plus any sums expended thereon in the future, which would be considered by the Massachusetts Board of Gas & Electric Light Commissioners as assets to capitalize. These sums would not include repairs and maintenance on the line.

761 The Attleboro Steam & Electric Company is to furnish at its own expense the necessary transformers, switching arrangements, etc., to properly receive the current contracted for, and the Narragansett Electric Lighting Company is to pay annually to the Attleboro Steam & Electric Company \$1,750.00 for the operation of the receiving sub-station by the Attleboro Company.

Under the provisions of the contract the price of 8.57 mills per KWH is subject to increase or decrease for fluctuations in the cost of coal to the Narragansett Electric Lighting Company above or below \$3.50 per long ton delivered alongside its generating station.

762 The contract also provides for decrease of the above-mentioned price of 8.57 mills per KWH to cover discoveries, inventions or improvements which materially decrease the cost of producing or transmitting said electricity and further provides for increase or decrease in the price of current to cover any increase or decrease in the cost of generating or transmitting the current caused by any new increased or decreased taxes, imposts, etc.

In obtaining the price specified in the contract, we have figured on the purchase of electricity by the Attleboro Steam & Electric Company for the full period of twenty (20) years covered by the con-

Exhibit No. 4

763

tract and have assumed that the current consumption would increase from approximately 4,500,000 KWH during the first year of the contract to approximately 20,000,000 KWH during the last year of the contract. This would make the total sale of current during the twenty years approximately 205,000,000 KWH. The fixed charges on the generating and transmission equipment have been figured for the entire period of the contract and pro-rated for each KWH. In this way the profit from this particular current is somewhat lower during the earlier years of the contract and somewhat higher during the later years than the average profit which we believe we are entitled to.

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We feel that the addition of this load to our generating station will decrease the cost of all current generated and in this way our customers in Rhode Island will receive the benefit of this contract.

We, therefore, respectfully request that you waive the usual statutory notice and allow this contract to go into effect at once.

Yours very truly,

ARTHUR D. LISLE,
General Manager.

(Stamped)

Received May 17, 1917

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In Regular Session Public Utilities Commission

Order No. 335

John W. Rowe, Secy.

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Exhibit No. 5

AGREEMENT made this eighth day of May, A. D. 1917, by and between the NARRAGANSETT ELECTRIC LIGHTING COMPANY, a Rhode Island corporation (hereinafter called the "Naragansett Company") party of the first part, and ATTLEBORO STEAM & ELECTRIC COMPANY, a Massachusetts corporation (hereinafter called the "Attleboro Company") party of the second part, and SEEKONK ELECTRIC COMPANY, a Massachusetts corporation (hereinafter called the "Seekonk Company") party of the third part:

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WITNESSETH:

WHEREAS the Attleboro Company desires to purchase electrical energy for sale in the City of Attleboro, Commonwealth of Massachusetts, and any adjacent territories; and

WHEREAS the Narragansett Company desires to furnish such electrical energy to the Attleboro Company,

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NOW, THEREFORE, the parties hereto in consideration of the premises and of One Dollar by each to each of the others paid, the receipt of which is hereby acknowledged, and of the mutual covenants and agreements hereinafter set forth, hereby covenant and agree with each other as follows:

ARTICLE I.

For and during the term of twenty years from the date of the first delivery of electrical energy

hereunder, and during any further continuance of this contract, the Narragansett Company shall sell and deliver to the Attleboro Company, and the Attleboro Company shall purchase and take from the Narragansett Company, all the electrical energy now or at any time hereafter used by it and supplied to its customers in the City of Attleboro and any adjacent territories, the amount now required, being approximately four million kilowatt hours per year, in accordance with and subject to the terms and provisions hereinafter set forth, but it is expressly understood and agreed that the first delivery of the electrical energy hereunder shall be made not later than January 1, 1918. The electrical energy to be delivered or furnished by the Narragansett Company shall be in the form of three phase alternating current having a frequency of approximately 60 cycles and a pressure of approximately 22,000 volts and such frequency shall not vary more than two per centum (2%) above or below said sixty cycles per second, and such voltage shall not vary more than five per centum (5%) above or below said 22,000 volts, except by reason of accident or any cause or condition beyond the reasonable control of the Narragansett Company. The Narragansett Company may supply such electrical energy at any other voltage provided that it shall pay or reimburse the Attleboro Company for any expense or cost to it caused thereby.

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ARTICLE II.

Such electrical energy shall be delivered by the Narragansett Company to the Attleboro Company

at the state line between the Town of Seekonk, Massachusetts, and the Town of East Providence, Rhode Island, and shall be metered on the secondary side of the transformers to be installed by the Attleboro Company at a sub-station furnished by the Attleboro Company at its expense in its present generating station or on the estate thereof located in the said City of Attleboro. The Seekonk Company shall secure the necessary rights of way and cause to be built a transmission line from the point of delivery of said electrical energy at the state line between said town of Seekonk, Massachusetts, and said East Providence, Rhode Island, to such point on the town line between the town of Seekonk and the City of Attleboro as will connect with the transmission line which the Attleboro Company shall cause to be built within the said city of Attleboro in the manner hereinafter set forth in order to transmit said electrical energy to said sub-station. In connection with the building of said transmission line within the town of Seekonk, the Narragansett Company does hereby covenant and agree to build the same for the Seekonk Company in a proper and workmanlike manner, using suitable and satisfactory material therefor and in accordance with the standard of good engineering practice, and the cost of building the same shall be paid by the Seekonk Company to the Narragansett Company when the same is completed, which cost, however, to the Seekonk Company shall include only the actual cost of material and labor and such other costs as would be considered assets to capitalize by the Massachusetts Board of Gas & Electric Light Commissioners, and

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shall in no event exceed \$4,500 per mile. The said transmission line shall be the property of the said Seekonk Company and shall be free from any claim of ownership by the Narragansett Company. In connection with the building of said transmission line within the city of Attleboro, the Narragansett Company does hereby covenant and agree to build the same for the Attleboro Company in a proper and workmanlike manner, using suitable and satisfactory material therefor and in accordance with the standard of good engineering practice, and the cost of building the same shall be paid by the Attleboro Company to the Narragansett Company when the same is completed, which cost, however, to the Attleboro Company shall include only the actual cost of material and labor and such other costs as would be considered assets to capitalize by the Massachusetts Board of Gas & Electric Light Commissioners, and shall in no event exceed \$4,500 per mile. The said transmission line shall be the property of the said Attleboro Company and shall be free from any claim of ownership by the Narragansett Company.

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During the life of this agreement the Narragansett Company hereby agrees to pay to the Seekonk Company and to the Attleboro Company respectively annually an amount equal to fifteen per centum (15%) of the amounts paid by the Seekonk Company and the Attleboro Company respectively to the Narragansett Company for the construction of said lines as hereinbefore provided, and the Seekonk Company and the Attleboro Company shall each at their own expense keep and maintain their respective lines in proper condition accord-

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ing to the standard of good engineering practice for the transmission and receipt of such electrical energy, and in case said lines shall be damaged or destroyed in part or wholly, each shall repair, restore or rebuild the same to any extent necessary to put them in proper condition for such use without any expense therefor to the Narragansett Company. In the event the Seekonk Company shall neglect or fail to keep and maintain the transmission line within the town of Seekonk, constructed by the Narragansett Company and owned by the Seekonk Company, in proper condition according to the standard of good engineering practice for the transmission and receipt of such electrical energy, or in the event the same shall be damaged or destroyed in part or wholly, and the Seekonk Company shall neglect to repair, restore or rebuild the same as quickly as the same can be done with reasonable dispatch, to any extent necessary to put it in proper condition for such use, then the Attleboro Company may maintain said transmission line or repair, restore or rebuild the same if necessary, and all costs incurred by the Attleboro Company in so doing shall be repaid to it by the Seekonk Company. The Seekonk Company will make such additions to such transmission line to be built by it as may be necessary because of any increased demand of the Attleboro Company.

The Attleboro Company shall furnish and maintain in said sub-station proper main transformers and in addition thereto transformers of such smaller capacity as are required to minimize the transformer losses which shall be used during the periods of light load.

The Narragansett Company shall also pay to the Attleboro Company the sum of Seventeen Hundred and Fifty (\$1750) Dollars per year, payable in equal instalments monthly to reimburse the latter company in part for its expense relative to the operation of said sub-station to the extent operated by it, such payments to begin on the first day of the month next following the month in which the first delivery of such electrical energy shall be made under this agreement. In case at any time during the continuance of this agreement, by operation of law or for any reason, the electricity to be furnished and delivered hereunder cannot be transmitted to the sub-station of the Attleboro Company in Attleboro over said transmission lines within the said town of Seekonk and the city of Attleboro, or either of them, in lieu thereof if the same can be reasonably accomplished then the Attleboro Company shall furnish and maintain a line in said Attleboro and the Seekonk Company shall furnish and maintain a line in said Seekonk to take and for the transmission of such electrical energy to said sub-station at the expense of the company which has to furnish such new transmission line because of the reasons before mentioned, but the Narragansett Company shall without interruption continue to pay to the Seekonk Company and the Attleboro Company respectively under such circumstances fifteen per centum (15%) on the costs of said original lines as hereinbefore provided.

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In addition to the said sum of fifteen per centum (15%) to be paid by the Narragansett Company to the Seekonk Company upon the cost of

said transmission line as built by the Narragansett Company for the Seekonk Company as hereinbefore provided, the Narragansett Company agrees to pay to the Seekonk Company fifteen per centum (15%) upon such additional sums annually as the Seekonk Company may from time to time expend for additions to its said line or upon such other line as may be built by it in accordance with the provisions of this contract and which expenditures would be considered assets to capitalize by the Massachusetts Board of Gas & Electric Light Commissioners.

785 In the event the said transmission line within the said town of Seekonk is used by the Seekonk Company for the transmission of electricity other than the electricity herein purchased and sold and transmitted, the Narragansett Company shall be entitled to such reduction of the payment by it to the Seekonk Company of said fifteen per centum (15%) annually as may be considered equitable.

ARTICLE III.

786 The Narragansett Company shall install and maintain as its property and at its expense, a proper meter or meters on the secondary side of transformers in the said sub-station of the Attleboro Company, and the electrical energy supplied shall be measured thereby, and such meter or meters shall be read monthly on the last day of each month for the purpose of determining the electricity used during such month. Any duly accredited employees or agents of the Narragansett Company shall have a right of access to install, maintain,

examine, test and read such meter or meters at all reasonable hours. Such meter or meters, at any time or from time to time, may be tested by the Narragansett Company and shall be tested and calibrated upon written request of either the Narragansett Company or the Attleboro Company, and in the latter case such test and calibration shall be in the presence of representatives of both parties, and if any such meter is found to be inaccurate, it shall be restored to an accurate condition by the Narragansett Company or a new meter substituted. The readings of any such meter tested and found to be not more than two per centum (2%) from accuracy shall be considered accurate for the purpose of any previous bills but shall be corrected for the purpose of future bills. If as a result of any such test any such meter shall be found to register in excess of two per centum (2%) either above or below accuracy, then the consumption recorded by such meter shall be corrected accordingly but not in any event for a longer period than thirty (30) days prior to the day of such test and provided further that such inaccuracy is less than ten per centum (10%). If the inaccuracy exceeds ten per centum (10%) the probable consumption shall be determined by agreement of the Narragansett Company and the Attleboro Company and in either event due credit or charge shall be made accordingly but not for a longer period than thirty (30) days prior to the day of such test. If at any time the meter furnished by the Narragansett Company shall fail to register, it shall be assumed that during such time as the meter failed to register electricity was taken by the Attleboro Company at the average

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Exhibit No. 5

rate of consumption for the thirty days preceding the failure of the meter to so register, and bills shall be rendered accordingly.

ARTICLE IV.

791 The Attleboro Company shall pay to the Narragansett Company for all electrical energy supplied by it under this contract at the rate of 8.57 mills per kilowatt hour, as registered by such meter or meters and subject to correction as aforesaid. Bills shall be rendered during the first part of each current month for electricity delivered during the next preceding month and shall be due and payable within fifteen days after rendition.

ARTICLE V.

792 The price per kilowatt hour hereinbefore specified shall be subject to being increased or decreased at the rate of .085 mills per kilowatt hour for every ten cent (10c) variation from the base price of three and one-half (\$3.50) dollars per long ton for coal delivered alongside the then main steam generating station or stations of the Narragansett Company on the Providence River or Harbor or Narragansett Bay in the State of Rhode Island. In determining any such variation for each said monthly period, the average cost per such ton delivered as aforesaid of all the coal consumed in the production of such electrical energy during such monthly period shall be taken.

All bills for coal purchased by the Narragansett Electric Lighting Company shall be kept on file

and at all reasonable times shall be open to the inspection of any duly authorized officers or agents of the Attleboro Company.

If the electrical energy supplied is produced by other means than the use of coal as fuel or partly thereby and partly by other means, the variation shall be figured on the difference between said sum of three and one-half (\$3.50) dollars and the best quoted price obtainable from reliable sources per such ton having a heat value of fourteen thousand five hundred (14,500) British Thermal units per pound of such quantity of coal to be delivered alongside any such station as hereinbefore provided and as would be required to produce such electrical energy, unless a material reduction in cost is thereby effected, in which event the provisions of Article VI of this contract shall control.

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ARTICLE VI.

In case at any time during the continuance of this contract any discovery, invention or improvement in electrical machinery, appliances, fixtures or appurtenances for furnishing electricity shall be made or any other method of generating or obtaining electricity or power is discovered or adopted, whether by the use of fuel other than coal, or in whatsoever manner, and which if adopted and used by the Narragansett Company would be of such greater practical and commercial value than the means then employed or used by the Narragansett Company for furnishing such electrical energy as to reasonably warrant the Narragansett Company to adopt and use the same, and which if used would cause a material reduction in the cost to the Narragansett Company of supplying such elec-

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Exhibit No. 5

trical energy, the Narragansett Company upon request by the Attleboro Company shall either adopt and use the same as soon as practicable after such request, and upon the same being so put in use, or in case of any failure of the Narragansett Company so to do as soon as practicable thereafter, said price for such electrical energy shall be reduced by the Narragansett Company to such an extent that the Attleboro Company shall receive the benefit of one-half of such reduced cost, or the reduced cost securable if the same were used, but in either case in fixing such new price, due consideration shall be given to and allowance made for any increased or decreased rate of depreciation or obsolescence on the new machinery, appliances, fixtures or apparatus used, or if used, and to any increased depreciation or obsolescence on the old machinery, appliances, or apparatus discontinued, or if discontinued, before the expiration of the normal useful life of the same.

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In case at any time during the continuance of this contract any law, ordinance, resolution, rule or regulation shall be imposed by any Federal, State or Municipal authority and which as a result imposes, removes, suspends or does away with any requirements or burdens, including any franchise taxes or any other special taxes or imposts, whether or not in addition to those now existing and which would materially increase or decrease the cost to the Narragansett Company of generating or otherwise obtaining or delivering electrical energy, said price for the same shall be increased or decreased by such amount as may be considered equitable under all the circumstances and provisions of this contract.

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ARTICLE VII.

If at any time during the continuance of this contract, by reason of strikes, accidents, conditions of coal supply, or by reason of any cause or condition of any kind whatsoever beyond the reasonable control of either party hereto affecting the plants, lines or equipment of either party hereto or any sources of supply of the Narragansett Company, or of any action of the civil or military authorities, any party hereto shall be partially or wholly unable to deliver or take the electricity contracted for, or perform its transmission obligations hereunder, the obligation to deliver or take such electrical energy or perform its transmission obligations hereunder shall be suspended to the extent of the interruption, but the respective obligations of the parties shall revive and become operative for the balance of the unexpired term of this contract as soon as the cause of the interruption is removed. Each party shall use and exercise all reasonable remedies and diligence to remove the causes of the interruption, restore its plant and equipment, and resume and continue to deliver or take such electrical energy or perform its transmission obligations hereunder, and any party hereto doing the same shall not be liable to the other for such interruption.

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ARTICLE VIII.

Each party hereto shall furnish in accordance with good engineering practice all the equipment required by it to deliver, transmit or take such

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Exhibit No. 5

electrical energy or perform its transmission obligations hereunder as herein provided, and shall keep and maintain the same in proper condition for such use in accordance with such practice.

ARTICLE IX.

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Each party to this agreement assumes the responsibility of securing and retaining any and all necessary and reasonable original or substitute rights of way, permits or franchises for their respective poles, wires and other equipment and for the transmission of electricity thereby in and over the streets and highways and in and over such streets and highways as will furnish a reasonably direct course from the source of supply of such electrical energy to said point of delivery at the state line between the said town of Seekonk and the town of East Providence, Rhode Island, and therefrom to said Seekonk and Attleboro boundary line at said point of connection and from such point to the point of metering at the sub-station to be installed by the Attleboro Company on its premises as hereinbefore provided for in Article II, and each party agrees, without expense to it, to aid the others to secure and retain the same.

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ARTICLE X.

If at any time a difference of opinion shall arise between the parties hereto in regard to their respective rights, duties and obligations, or any rights, duties or obligations of any of said parties, or any

matter to be determined or done, under and within the terms and provisions of this contract, the question or questions in dispute shall be referred to a Board of Arbitration, consisting of three persons. One of the said arbitrators shall be chosen by the Narragansett Company, one by the Attleboro Company and the third by the two arbitrators so chosen unless the matter in dispute shall be wholly between the Narragansett Company and the Seekonk Company, in which case the said Narragansett Company and the said Seekonk Company shall each choose an arbitrator and the third shall be chosen by the two arbitrators so chosen, and the Attleboro Company shall not be a party to such arbitration, but the interests, or rights, duties and liabilities of the Attleboro Company shall not be affected by any Board of Arbitration chosen in the latter manner.

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The party desiring an arbitration shall give to the other party or parties written notice of the same, setting forth therein the point or points in dispute with reasonable definiteness and the name and address of the person appointed by it as an arbitrator, together with a copy of the written acceptance of the appointment by such person. The party or parties to whom such notice and copy are given, within thirty (30) days after the receipt of the same, shall give written notice to the other party or parties of the name and address of the person appointed by it as an arbitrator, together with a copy of the written acceptance of the appointment by such person, and in case it shall fail so to do the arbitrator appointed by the other party in conformity herewith shall be the sole arbitrator. If

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the two arbitrators chosen by the parties respectively shall not agree on a third arbitrator who will serve, within twenty days after notice is received of the appointment of and acceptance by the second arbitrator as aforesaid, the third arbitrator shall be chosen by the Judge of Probate for the time being for Bristol County, Commonwealth of Massachusetts, on the written application made to him by either one of the parties to such arbitration proceedings who have chosen the original arbitrators after at least three days notice in writing to the other party of the time and place of the application. The Board of Arbitrators, or the Arbitrator if but one, so chosen shall promptly proceed to give the parties and their counsel opportunity to be heard and to present their evidence, and after giving to each party hereto not less than ten (10) days notice of the time and place of the first meeting shall proceed expeditiously to hear and dispose of the matters in dispute, and in case of any further meeting, except an adjourned meeting to a definite time and place, like notice shall be given unless such notice is waived by both parties, in which case the hearing may proceed at an earlier date. The determination of such Board of Arbitrators or a majority of them, or of such sole arbitrator if there be but one, as to any and all matters so submitted to them or him, shall be final and conclusive upon the parties hereto, and said parties shall abide by such decision and perform the terms and conditions thereof as if the same were made a part of this agreement. If any arbitrator for any reason shall not serve or continue to serve, such vacancy, within twenty (20)

days after notice of its occurrence shall be filled in like manner as the original appointment of such arbitrator, and notice of the new appointment shall within said period of twenty (20) days be given to any party not making the appointment and to any remaining arbitrators. If such vacancy or notice be not so filled or given, the vacancy shall be filled by the Judge of Probate for the time being for Bristol County, Commonwealth of Massachusetts, in manner aforesaid. Any such other or new arbitrator shall have the powers and duties of the arbitrator whose place he takes. The reasonable fees and expenses of the arbitrators, or of the arbitrator if but one, shall be borne and shared by the parties hereto in such manner or in such proportions as the arbitrators, or the arbitrator if but one, shall award.

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ARTICLE XI.

After the expiration of the fifteenth year of the term of this contract, the Narragansett Company or the Seekonk Company shall not be required to furnish in any one year any increased transmission facilities to provide for any increased demand in excess of twice the average rate per centum of increase per year during the period of fifteen years next preceding the time of such excess demands unless the Narragansett Company or the Seekonk Company is compensated therefor in such manner and amounts as may be determined by arbitration in the manner hereinbefore provided.

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ARTICLE XII.

The Attleboro Company, in consideration of said price for said supply of said electrical energy, agrees with the Narragansett Company that during the continuance of this agreement, it will retain and maintain at its own expense its present generating station and machinery, except its present engine driven units, and that the Narragansett Company may at any time or times use the same for the purpose of generating electrical energy and supplying the same to the Attleboro Company in performance
815 wholly or in part of the agreement of the Narragansett Company herein to supply such electrical energy, but in the event of such use, the Narragansett Company shall pay all cost of operation and shall pay to the Attleboro Company any and all expense of the Attleboro Company caused by such use over and above the amount of its expenses in retaining and maintaining the same as above provided.

ARTICLE XIII.

The Narragansett Company does hereby guarantee to the Attleboro Company that the Seekonk Company will promptly and properly carry out all terms
816 and provisions of this contract, and in the event of the failure of the Seekonk Company to properly perform and carry out the same, the Narragansett Company does hereby agree to hold the Attleboro Company harmless and to indemnify it for all loss, damage, costs and expense incurred or suffered by it by reason of said breach or failure on the part of the said Seekonk Company.

ARTICLE XIV.

This agreement shall run and be operative during said full term of twenty (20) years, and, unless at least a year prior to the end of said term either party hereto shall notify the other in writing that it will not permit the continuance thereof beyond said term, shall also continue thereafter in full force and effect to all intents and purposes and upon the same terms and conditions herein prescribed until terminated by one year's previous notice in writing from either party to the other.

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ARTICLE XV.

This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto and to two other instruments of like tenor caused their corporate seals to be affixed and to be signed in their names and behalf by their respective officers thereunto duly authorized, the day and year first above written.

NARRAGANSETT ELECTRIC LIGHTING COMPANY

By EDWIN A. BARROWS, President 819

By WILLIAM G. NYE, Treasurer

Signed and sealed in presence of

J. E. GRAY

witness as to both

(Corporate Seal)

820

Exhibit No. 5

ATTLEBORO STEAM & ELECTRIC COMPANY
By THOMAS C. FALES, President
By VINCENT GOLDTHWAITE, Treasurer

CHANDLER M. WOOD
witness to both
(Corporate Seal)

SEEKONK ELECTRIC COMPANY
J. E. GRAY
(Corporate Seal)
By EDWIN A. BARROWS, President

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Exhibit No. 6**COPY**

R. I. P. U. C. No. 68

NARRAGANSETT ELECTRIC LIGHT COMPANY**SPECIAL RATE TO THE ATTLEBORO
STEAM AND ELECTRIC COMPANY****CHARACTER OF SERVICE**

22,000 volt, 3 phase, 60 cycle alternating current delivered at the state line between the town of East Providence, Rhode Island, and the Town of Seekonk, Massachusetts. 824

CONDITIONS

Transmission lines outside the State of Rhode Island to be furnished by foreign corporations for an annual payment of fifteen per cent. (15%) of their cost.

RATE

8.57 mills per kilowatt hour as registered by the meters installed in the sub-station of the Attleboro Steam & Electric Company. The Narragansett Company to pay \$1750.00 per year for operation of the receiving sub-station. 825

Above price to be subject to increase or decrease for fluctuations in the cost of coal above or below \$3.50 per long ton alongside the Narragansett Electric Lighting Company's station; also to increase or decrease to cover in-

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Exhibit No. 6

crease or decrease in regular or special taxes
or new taxes.

TERM OF CONTRACT

Twenty (20) years and thereafter unless dis-
continued by either party.

Effective

Issued

(Stamped)

827

Received May 16, 1917
Public Utilities Commission
John W. Rowe, Secretary

828

**Narragansett
Electric Lighting Company
Providence, R. I.**

**ANNUAL REPORT
and
STATEMENTS**

830



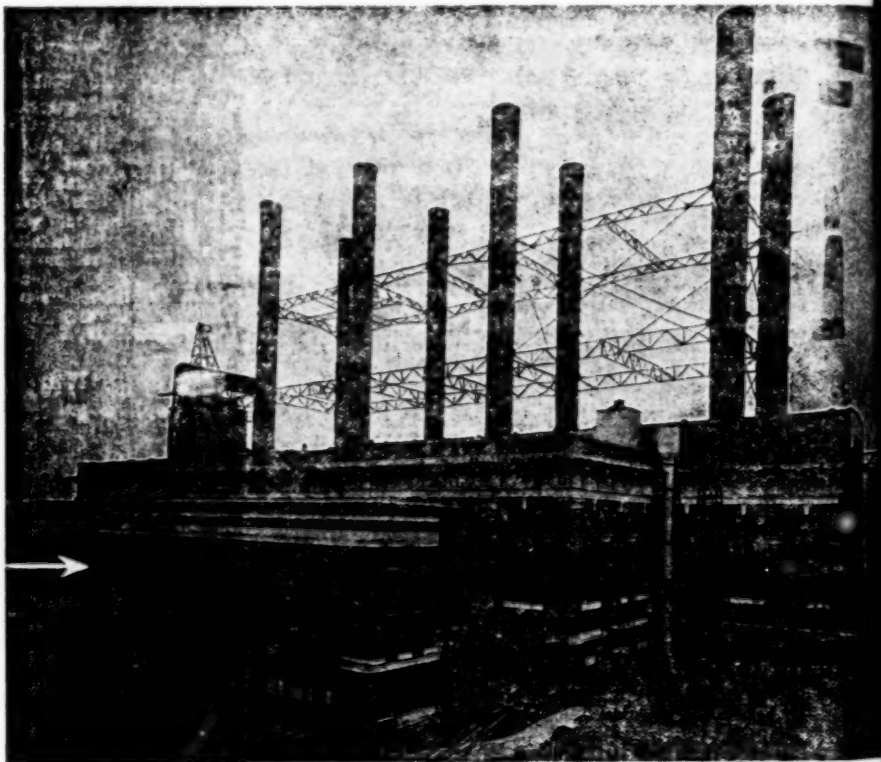
831

**For the Fiscal Year Ending
December 31, 1923**

832

833

SWITCH
HOUSE



834

GENERATING STATION SHOWING NEW SWITCH HOUSE

DIRECTORS

WILLIAM W. DOUGLAS	ARTHUR B. LISLE
DANIEL A. PEIRCE	R. H. IVES GODDARD
GEORGE L. SHEPLEY	EDWIN A. BARROWS
H. MARTIN BROWN	RUSSELL GRINNELL
SAMUEL M. NICHOLSON	WILLIAM A. VIAL
STEPHEN O. METCALF	HOUGHTON P. METCALF
BYRON S. WATSON	PAUL C. NICHOLSON
RICHARD A. ROBERTSON	WILLIAM S. INNIS

EXECUTIVE COMMITTEE

EDWIN A. BARROWS	SAMUEL M. NICHOLSON
WILLIAM W. DOUGLAS	H. MARTIN BROWN
GEORGE L. SHEPLEY	ARTHUR B. LISLE
	WILLIAM A. VIAL

836

OFFICERS

<i>President</i>	<i>Vice-President</i>
EDWIN A. BARROWS	WILLIAM W. DOUGLAS
<i>Secretary and Treasurer</i>	<i>Assistant Secretary</i>
FRANKLIN L. HALL	JESSE E. GRAY
<i>Assistant Treasurer</i>	<i>General Manager</i>
LESLIE F. MOWRY	ARTHUR B. LISLE

General Superintendent
WESLEY T. OVIATT

Superintendent of Distribution 837
SAMUEL B. SWAN

Superintendent of Generation
NICHOLAS STAHL

TO THE STOCKHOLDERS OF THE
NARRAGANSETT
ELECTRIC LIGHTING COMPANY

Following is the report of your Directors for the year ended December 31, 1923, which was the thirty-ninth year of the company:

Many important phases of our business have shown a remarkable growth. Constructive progress generally has been made.

839 The Melrose Service Station in Elmwood was completed the early part of the year and is in constant use. This development gives our operating departments enlarged facilities for carrying on the company's business and reflects itself in the greater efficiency of the entire operating force. It is considered one of the best and most practical for efficient work in the country.

The new switch house, which is rapidly nearing completion at our Plant on Eddy Street, is of the latest design and contains the most modern type of equipment.

When in operation it will greatly improve conditions and will benefit our customers by a greater reliability of service, which is of the utmost importance.

840 The number of customer-stockholders has largely increased during the year, thus bringing closer personal relations between the company and those whom it serves.

The gross and net earnings of the company were materially larger than in previous years and your company today is in a prosperous condition.

Relations with the public have continued to be

cordial. The management realizes that in conducting its business the goodwill and friendship of the public, as well as a better understanding of the company's policies by those with whom it does business, is most essential.

In order to properly serve the community and provide the necessary extensions of lines and plant to take care of our rapid growth a large amount of capital is needed every year. Rates fair to the consumer, and satisfactory earnings, will insure this flow of capital from our ever increasing number of stockholders and from the public.

As has been our custom in past years, we desire in this report to call to your attention certain results from company operations during the year, which we think will be of interest to every stockholder.

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REVENUE AND EARNINGS

The total revenue for the year amounted to \$6,636,600, an increase of \$1,061,775. The net income for the year, after deducting all operating expenses, interest, taxes, depreciation, etc., amounted to \$1,595,848. The regular dividend of 8% per annum on the capital outstanding has been earned, and \$293,392 has been added to the surplus account. In setting aside the depreciation for the year, your Directors have taken what they felt to be a reasonable and adequate amount for depreciation and obsolescence.

843

During the year 359,746,610 kilowatt-hours were generated at our Plant, some 80,000,000 kilowatt- ✓

hours or nearly 30% greater than in 1922. This is by far the largest output in the company's history. The electricity generated in the month of August alone was nearly as much as was generated during the entire year of 1913, ten years ago. This in itself indicates the somewhat amazing growth of the company during the past few years.

PROPERTY AND PLANT

845 Additions to the property and plant have amounted to \$2,111,616 during the year. This sum includes final payments for our new Service Station on Melrose Street, of \$321,134.

Payments on the new Switch House and equipment at the Generating Plant have amounted to \$759,309.

Additions to the transmission system have amounted to \$160,000 and to the distribution system, \$675,000. Both of these amounts cover poles, wires, transformers, meters, and other equipment necessary to bring the electricity from the Generating Plant to the customer's premises. These seemingly large amounts were necessary to provide for the company's large increase in business.

FINANCIAL

The issue of the Convertible Notes of July, 1920, matured July 1, 1923. The majority of these were converted into stock at different interest periods, leaving a comparatively small amount to be taken care of at maturity. All of the Convertible Notes issued have now been converted into the Capital

Stock of the company. At the present time there are no securities outstanding other than the regular Common Stock of \$16,320,000. ✓

It is with considerable satisfaction that we announce that the number of stockholders increased to approximately 11,000, a gain of 2,700 during the year. This increase has come almost entirely from our regular customers. In April the company purchased some 7,000 shares of its own Stock through the various brokerage houses in the City, and resold these at cost to those of our customers who were not already shareholders—not over five shares to any one person. By this means alone 1,666 new stockholders were added to the list. An analysis of our stockholders shows that we have persons in more than a hundred different occupations owning Narragansett Stock. The list includes representatives from nearly every walk in life.

848

The following schedule shows some interesting facts relative to the holdings of our stockholders.

Stockholders owing from	Number of Stock- holders	% of Total Number of Stockholders	Shares Owned	% of Total Number of Shares
1 to 5 shares	4,065	43%	17,857	6%
6 to 10 "	2,276	17%	19,145	5%
11 to 25 "	1,925	19%	33,818	11%
26 to 50 "	1,001	10%	37,875	12%
51 to 100 "	551	5%	41,088	12%
101 to 200 "	329	3%	48,207	16%
201 to 300 "	109	1%	32,037	10%
301 to 400 "	52	1%	18,637	6%
401 to 500 "	25	...	11,607	3%
501 to 1,000 "	46	1%	31,913	10%
1,001 to 2,000 "	9	...	11,317	3%
2,001 to 3,000 "	5	...	11,718	3%
3,001 to 4,000 "	1	...	3,063	1%
4,001 to 5,000 "	2	...	8,118	2%
Total	10,396	100%	326,400	100%

849

850

Exhibit No. 7

CUSTOMERS

The growth of the number of customers during the year has been remarkable. Our books show a gain of 11,484 over the previous year, the largest in the company's history. This is at the rate of almost 1,000 each month. In other words, our Distribution Department has run services and installed meters for new customers on an average of about forty every working day. There are now on the company's books 71,554 customers.

851

HOUSE WIRING CAMPAIGNS AND MERCHANDISE
SALES

During the year the company has been carrying on an intensive house and store wiring campaign. The result has been that 2,742 of the older type houses, some of them for two and three families, and sixty-seven stores, have been wired for electric service. This alone has increased the number of our customers by 5,046. The estimated gross income from this business is figured at \$126,150. These campaigns will be continued during the year 1924, as there are fully 25,000 houses in the company's territory still without electric service.

852

The company has a well organized Merchandising Department which has made sales of electrical appliances and lamps during the year in the amount of \$746,947.

In addition to the Electric Shop in the Turks Head Building, there are branch stores in Bristol, Warren, Attleboro, Arctic, East Greenwich, Olneyville and Washington Park. These Electric Shops are attractive additions to the neighborhood in

which they are situated, and are a great convenience to our customers in the various localities. Sales of appliances during the year included 3,120 Vacuum Cleaners, 7,637 Flat Irons, 7,885 Portable Lamps, 718 Washing Machines, and 40 Electric Ranges. The income from electricity used by these appliances is estimated to be \$110,000 per year. 853

FUEL SUPPLY *Exhibit No. 7*

Nearly all of the fuel burned under the boilers during the year was oil, and amounted to approximately 1,277,925 barrels. As in the past, the efficiency of oil for fuel has proved very satisfactory. We have been purchasing the oil under a favorable contract, both as regards service and price. The oil supply for the current year of 1924 has been contracted for. 854

SUBSIDIARY COMPANIES

Our subsidiary companies, consisting of the Naragansett Pier Electric Light and Power Company, the Wickford Light and Water Company, the Westerly Light and Power Company, the Mystic Power Company, and the Seekonk Electric Company, are in good condition. All of these companies have made additions to their property and plant during the year and have increased their business to a very considerable extent. 855

EMPLOYEES

The employees of the Company have shown the same faithful support and loyalty as in previous years.

856

Exhibit No. 7

Life insurance on the group plan was continued through the year 1923. There were six deaths among our employees during this period, and insurance to the amount of \$5,400 was paid to beneficiaries.

The employees have continued paying on their shares of company stock subscribed for in 1922. These shares will be fully paid for next August. At the present time over 50% of our employees are stockholders in the company.

857 During the year the company again purchased coal for its employees for household use, and sold to them at the rate of 50c per ton per week, same being deducted from the pay envelope.

The Nelco News, which is a monthly publication of the employees, has been carried on successfully another year and is now in its sixth year.

The Neleo Athletic Club, which promotes athletic sports, recreation and entertainments for the employees; also, the Nelco Mutual Benefit Association, a sick benefit organization, are both in excellent condition.

An outing for the office employees was held at Pomham Club in July, and one for the station employees at Rocky Point in August. Both of these outings were largely attended.

858

GENERAL

The following schedule shows the general growth of the company in capital stock, revenue, output and customers:

Exhibit No. 7

	Capital Stock	Total Revenue	K. W. H. Generated	Number of Customers
1914.....	\$6,000,000	\$1,670,654	47,405,874	22,125
1915.....	6,500,000	1,834,840	61,026,430	25,194
1916.....	7,500,000	2,072,784	73,094,698	28,817
1917.....	10,200,000	2,566,003	113,238,441	31,375
1918.....	10,200,000	3,464,623	150,028,780	32,368
1919.....	10,974,750	3,856,083	155,678,890	36,216
1920.....	11,693,800	4,995,315	207,967,950	42,790
1921.....	12,917,300	5,049,066	299,667,600	49,809
1922.....	16,168,850	5,574,825	277,993,260	59,985
1923.....	16,320,000	6,636,600	359,746,610	71,554

We have every reason to believe that the year 1924 will show continued prosperity and further increases in business and earnings.

The work of gradually changing over our 250 volt lighting system to 104 volts has been continued during the year. Customers in Bristol, Warren, Barrington, South Auburn, Eden Park, East Greenwich and Apponaug have all been changed over. Good progress is being made in other sections. The entire work of changing over the voltage in all our territory is an undertaking that will require a number of years and will cost a large amount of money. It will, however, when accomplished, be to the mutual advantage of both the customers and the company.

860

This company supplies to the community indispensable necessities. The growth and prosperity of our territory is more and more dependent on the prosperity of its public utilities. The welfare of one is largely dependent on the other.

861

We believe that strong and successful utilities are an asset to the cities and towns they serve. On the other hand, unsuccessful utilities, unable to obtain the capital needed to make extensions and improvements, must of necessity render poor service and are a hindrance to growth and welfare.

862

Exhibit No. 7

The public today realizes these facts to a greater extent than ever before.

It is with pleasure that your Directors once more acknowledge their appreciation of the untiring efforts of the officers and employees who have made possible the efficient conduct of the company's business and who have loyally promoted its best interests.

Respectfully submitted,

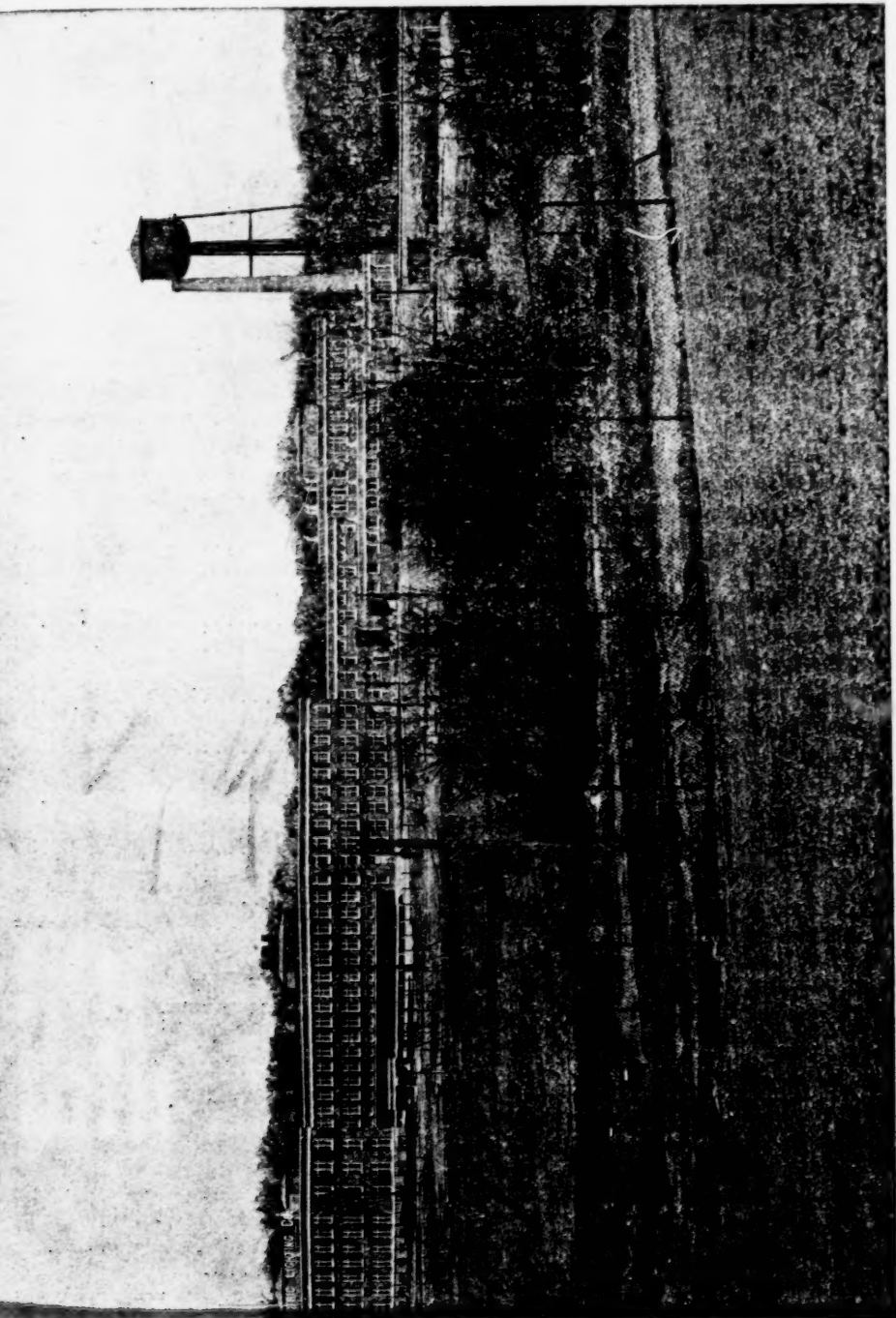
For the Board of Directors,

EDWIN A. BARROWS,

President.

863

864



MELROSE SERVICE STATION

CONDENSED BALANCE SHEET

December 31, 1923

ASSETS

	Property and Plant, less Reserve for Depreciation	\$16,190,890.84
	Materials and Supplies.....	796,868.54
	Securities Owned, Subsidiary Companies	1,070,530.78
	Other Securities Owned.....	1,000.00
	Deposits in Banks and Cash in Office	206,307.30
	Due from Subsidiary Companies.	27,592.94
869	Notes Receivable, Subsidiary Com- panies	245,000.00
	Notes Receivable, Miscellaneous..	4,170.00
	Accounts Receivable, Light and Power	643,347.57
	Accounts Receivable, Merchandise and House Wiring.....	660,403.89
	Accounts Receivable, Stock Sub- scription Installments.....	42,472.01
	Prepaid Taxes, Insurance, Inter- est, etc.....	246,082.33
	Total	<u>\$20,134,666.20</u>

LIABILITIES

	Capital Stock, 326,400 Shares of \$50.00 each	\$16,320,000.00
870	Accounts Payable	480,331.00
	Notes Payable	1,310,000.00
	Due to Subsidiary Companies....	263,332.89
	Taxes and Interest Accrued.....	257,979.09
	Dividend Payable January 2, 1924	326,400.00
	Miscellaneous Reserves	460,000.00
	Miscellaneous Unadjusted Credits	6,870.03
	Surplus	709,753.19
	Total	<u>\$20,134,666.20</u>

CONDENSED INCOME ACCOUNT

For the Year Ended December 31, 1923

Total Revenue from all Sources....	\$6,636,601.17	
Operating Expenses. \$4,383,313.69		
Depreciation and Obsolescence, etc. ..	496,719.13	
Interest and Other Deductions from Income	160,719.41	5,040,752.23
		<u>\$1,595,848.94</u>

872

Disposition of Net Income:

Dividends	\$1,302,456.00
Credited to Surplus.....	293,392.94
	<u>\$1,595,848.94</u>

873

874

Exhibit No. 7

CABLE ADDRESS "ERNSTAUDIT" NEW YORK

NEW YORK
 PHILADELPHIA
 BOSTON
 PROVIDENCE
 BALTIMORE
 WASHINGTON
 RICHMOND
 BUFFALO
 PITTSBURG
 CLEVELAND
 CINCINNATI
 TOLEDO
 DETROIT

ERNST & ERNST
 AUDITS AND SYSTEMS
 TAX SERVICE
 PROVIDENCE
 HOSPITAL TRUST BLDG.

CHICAGO
 MINNEAPOLIS
 ST. PAUL
 INDIANAPOLIS
 DENVER
 ST. LOUIS
 KANSAS CITY
 NEW ORLEANS
 ATLANTA
 DALLAS
 FORT WORTH
 HOUSTON

January 28, 1924.

MR. EDWIN A. BARROWS, President,
 Narragansett Electric Lighting Company,
 Providence, R. I.

875

Dear Sir:

In accordance with your instructions we have made an audit of the books of account and records of the Narragansett Electric Lighting Company, Providence, R. I., for the year ended December 31, 1923.

876

The cash resources of the Company at December 31, 1923, were fully accounted for either by actual count or by reconciliation of the book records with certificates received direct from the depositories. We made substantial tests of the cash receipts and disbursements for the year under review and found that recorded cash receipts had been properly accounted for and disbursements had been made on properly authorized vouchers in the periods coming within the scope of our tests.

Investments in and notes and accounts receivable of subsidiary companies and other accounts receivable and miscellaneous assets shown on the

attached Balance Sheet were accounted for. We satisfied ourselves that all additions to Property and Plant account were proper charges thereto and that a reasonable allowance had been made during the year for depreciation.

Provision has been made on the attached Balance Sheet for all known liabilities of the Company existing at December 31, 1923, except certain invoices for materials in transit, supplies not included in inventories, etc., which were not received or entered on the books before closing.

Subject to the foregoing comments WE HEREBY CERTIFY that we have audited the books of account and records of the Narragansett Electric Lighting Company, Providence, R. I., for the year ended December 31, 1923, and that it is our opinion, based upon our examination and information submitted to us, that the annexed Balance Sheet reflects the financial condition of the Company at December 31, 1923, and that the relative statement of Income is correct.

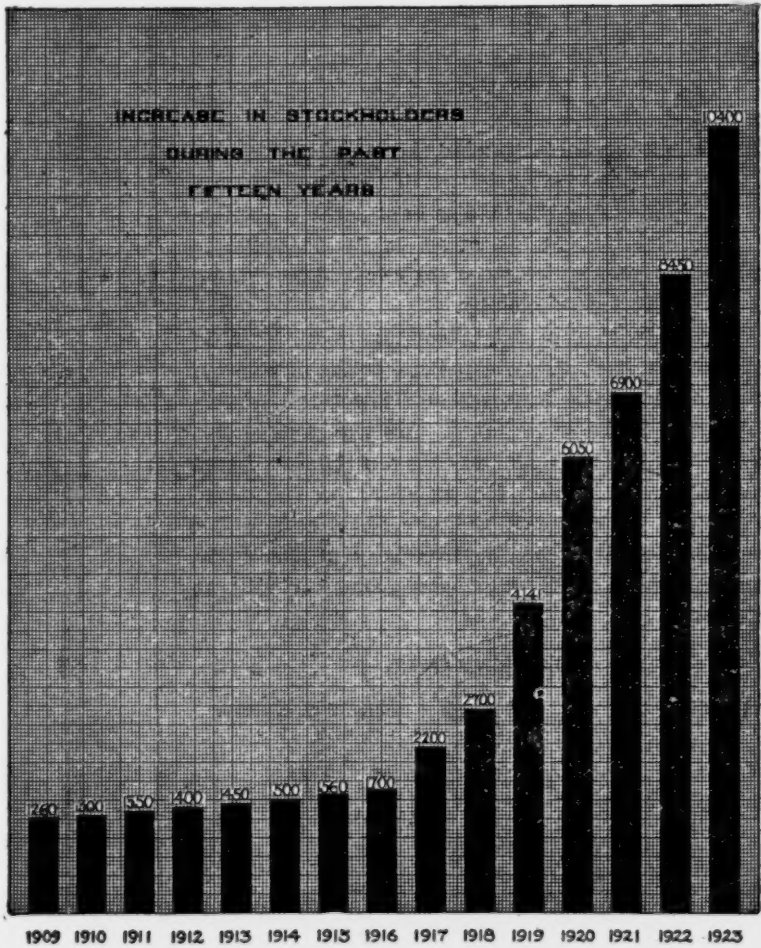
878

Yours very truly,

{SEAL}

ERNST & ERNST.

879

Exhibit No. 7

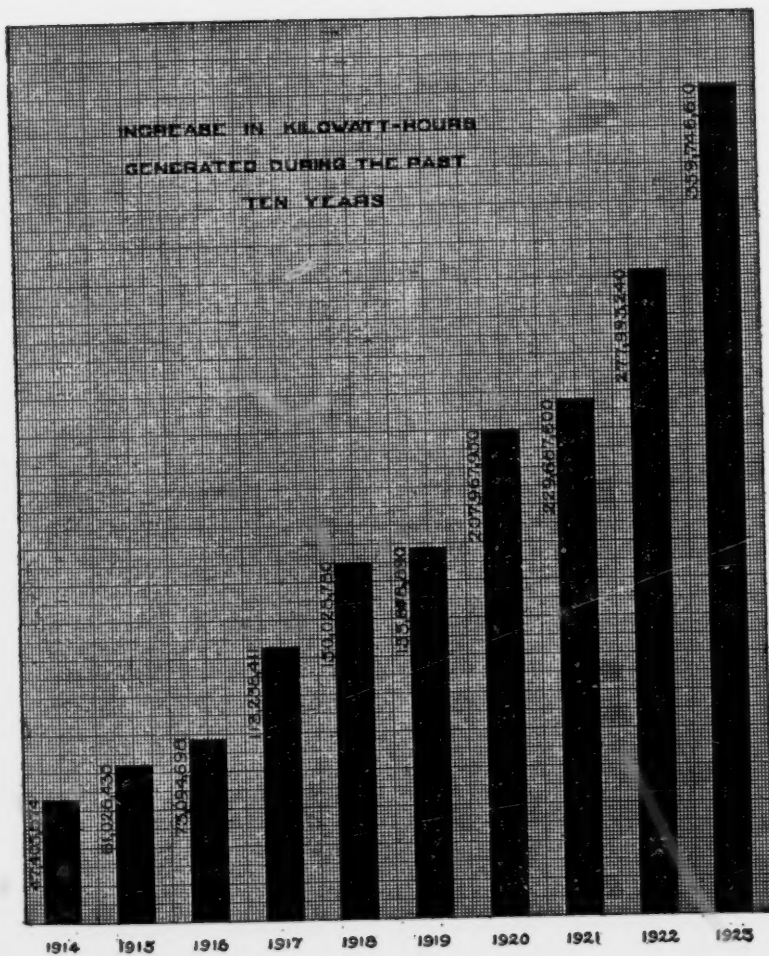
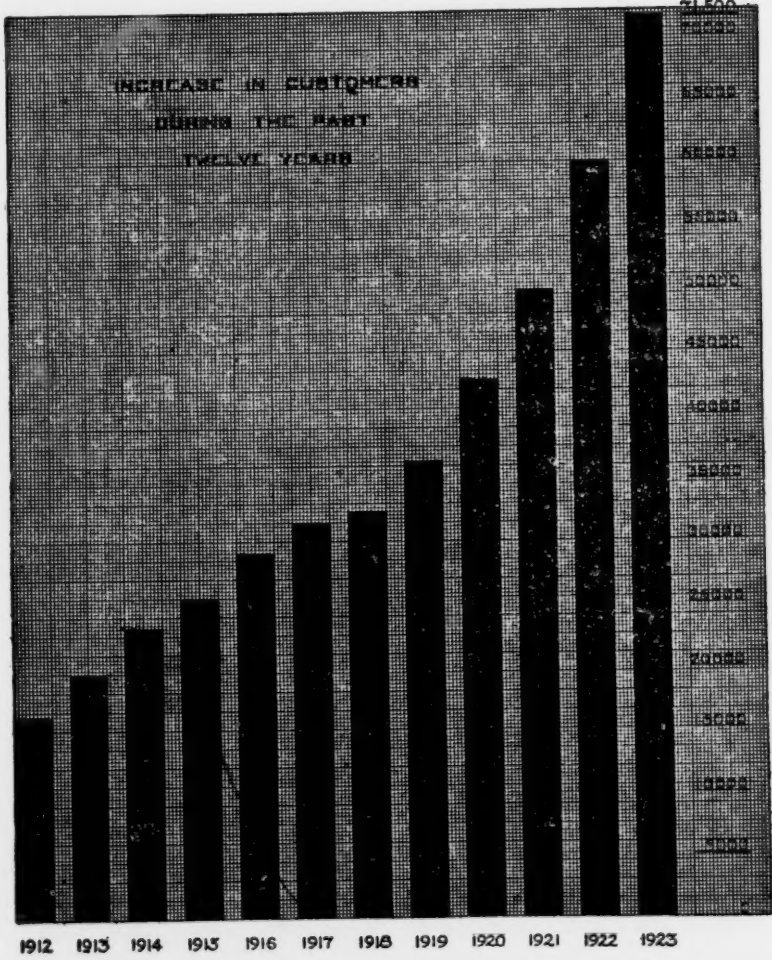


Exhibit No. 7



INCREASE IN TOTAL REVENUE
DURING THE PAST TEN YEARS

1923



890

\$ 6,636,000

1919



\$ 3,856,000

891

1914



\$ 1,670,000

892

Exhibit No. 8

**PEAK LOADS CARRIED BY STATION WITH
TURBINES OUT OF COMMISSION DUE
TO ACCIDENT**

Received June 12, 1924
Public Utilities Commission
State of Rhode Island

On July 11th there was a failure of the armature of turbine #1, a 45,000 K.V.A. unit. Repairs on this unit were not completed until October 3rd. From June 18th to July 27th turbine #6, a 20,000 K.V.A. turbine was also out of service, due to a field failure. During the period that both of these turbines were down, July 11th to July 27th, we were able to carry on each day the following loads:

	1923	K.W.	Time
July	12	54,000	3— 5 P.M. 10—11 P.M.
"	13	54,000	4— 5 P.M.
"	14	53,000	9—10 P.M.
"	15	45,000	9—10 P.M.
"	16	57,000	10—11 A.M.
"	17	57,000	1— 2 P.M. 9—10 P.M.
"	18	57,000	2— 3 P.M.
"	19	59,000	10—11 P.M.
"	20	56,000	9—10 A.M. 2— 3 P.M.
"	21	54,000	9—10 P.M.
"	22	53,000	9—10 P.M.
"	23	57,000	8— 9 A.M. 2— 3 P.M.
"	24	57,000	1— 2 P.M. 8—10 P.M.
"	25	57,000	1— 2 P.M.
"	26	57,000	9—10 A.M. 2— 3 P.M.
"	27	57,000	4— 5 P.M. 10—11 P.M.

On July 27th the 20,000 K.V.A. turbine was put into service leaving the 45,000 as the only large turbine down which itself was put back on the line

Exhibit No. 8

895

October 3rd. During this period we were able to carry on each day the following loads:

1923		K.W.	Time	
July	28	51,000	9—10 P.M. (Saturday)	
"	29	35,000	9—10 P.M. (Sunday)	
"	30	67,000	2— 3 P.M.	
"	31	74,000	9—10 P.M.	
August	1	73,000	9—10 A.M.	
"	2	76,000	1— 2 P.M.	
"	3	71,000	10—12 P.M. 2— 3 P.M.	
"	4	69,000	8— 9 P.M.	
"	5	53,000	9—10 P. M.	
"	6	74,000	9—10 P.M.	
"	7	71,000	2— 4 P.M.	
"	8	70,000	9—11 P.M. 1— 4 P.M.	896
			9—10 P.M.	
"	9	71,000	2— 3 P.M.	
"	10	70,000	9—10 P.M.	
"	11	72,000	10—11 P.M.	
"	12	54,000	9—10 P.M.	
"	13	71,000	10—12 A.M. 1— 2 P.M.	
"	14	72,000	2— 3 P.M.	
"	15	72,000	10—11 P.M.	

1923		K.W.	Time	
August	16	71,000	9—10 A.M. 8— 9 P.M.	
"	17	72,000	2— 3 P.M.	
"	18	71,000	10—11 P.M.	
"	19	54,000	8— 9 P.M.	
"	20	72,000	9—11 P.M.	
"	21	71,000	4— 5 P.M. 8—10 P.M.	897
"	22	71,000	3— 5 P.M. 9—10 P.M.	
"	23	71,000	4— 5 P.M. 9—10 P.M.	
"	24	71,000	3— 4 P.M. 9—11 P.M.	
"	25	71,000	8— 9 P.M.	
"	26	48,000	10—11 P.M.	
"	27	72,000	1— 2 P.M. 8—11 P.M.	
"	28	71,000	9—12 A.M. 1— 4 P.M.	
"	29	71,000	10—11 A.M. 1— 3 P.M.	

898

Exhibit No. 8

	"	30	72,000	10—11 A.M.	
	"	31	72,000	3— 5 P.M.	8—10 P.M.
899	September	1	67,000	9—10 P.M.	
	"	2	48,000	8— 9 P.M.	
	"	3	49,000	9—10 P.M.	
	"	4	72,000	2— 3 P.M.	
	"	5	72,000	10—11 A.M.	
	"	6	72,000	8— 9 A.M.	
	"	7	71,000	10—11 A.M.	1— 3 P.M.
				4— 5 P.M.	9—11 P.M.
	"	8	52,000	7— 8 A.M.	
	"	9	41,000	8— 9 P.M.	
	"	10	71,000	9—10 A.M.	3— 5 P.M.
				9—11 P.M.	
	"	11	71,000	9—10 A.M.	1— 4 P.M.
				8—10 P.M.	
	"	12	71,000	9—10 A.M.	2— 3 P.M.
				9—10 P.M.	
	"	13	71,000	10—11 A.M.	3— 4 P.M.
	"	14	71,000	10—11 P.M.	
	"	15	72,000	8— 9 P.M.	
	"	16	62,000	8— 9 P.M.	
	"	17	68,000	3— 4 P.M.	9—10 P.M.
	"	18	69,000	3— 4 P.M.	6— 7 P.M.
	"	19	69,000	1— 3 P.M.	9—10 P.M.
	"	20	71,000	3— 4 P.M.	5— 8 P.M.
	"	21	71,000	9—10 A.M.	3— 4 P.M.
	"	22	66,000	9—10 A.M.	
	"	23	26,000	7— 8 P.M.	
	"	24	71,000	10—12 A.M.	
	"	25	72,000	1— 2 P.M.	
	"	26	71,000	3— 8 P.M.	9—11 P.M.
900	"	27	71,000	3— 8 P.M.	9—11 P.M.
	"	28	71,000	2— 5 P.M.	6— 8 P.M.
	"	29	70,000	10—11 A.M.	
	"	30	35,000	7— 8 A.M.	5— 6 P.M.
	October	1	72,000	7— 8 P.M.	
	"	2	71,000	10—11 A.M.	3—11 P.M.
	"	3	71,000	9—11 A.M.	2— 3 P.M.
				4— 5 P.M.	6— 9 A.M.
				10—11 A.M.	

Exhibit No. 9

901

HIGHEST PEAK LOAD* IN EACH MONTH

Received June 12, 1924
Public Utilities Commission
State of Rhode Island

<i>1923</i>		<i>K.W.</i>	<i>Time</i>	
January	8	79,000		
"	12	79,000		
"	15	79,000		
February	7	78,000		
"	13	78,000		
"	28	78,000		
March	6	84,000	10—11 A.M. 2— 4 P.M.	
"	7	84,000	10—11 A.M.	
"	30	84,000	3— 4 P.M.	902
April	6	84,000	3— 4 P.M.	
"	9	84,000	1— 2 A.M.	
"	11	84,000	9—10 A.M.	
May	9	75,000		
June	5	71,000		
"	6	71,000		
"	13	71,000		
"	15	71,000		
July	5	71,000		
"	6	71,000		
"	13	71,000		
"	15	71,000		
August	1	76,000		
September	4	72,000		
"	6	72,000		
"	15	72,000		
"	25	72,000		903
October	23	81,000	3— 6 P.M.	
"	30	81,000	9—11 A.M. 2— 3 P.M.	
November	21	88,000	4— 5 P.M.	
"	23	88,000	4— 5 P.M.	
December	17	88,000	4— 5 P.M.	

904

Exhibit No. 9

<i>1924</i>				
January	22	87,000	4— 5 P.M.	
"	29	87,000	10—11 A.M.	
February	19	88,000	3— 4 P.M.	
March	4	86,000	9—11 A.M.	3— 4 P.M.
April	1	82,000	10—11 A.M.	1— 2 P.M.
"	2	82,000	9—10 A.M.	
May	20	69,000		

From January 1, 1923 to June 1, 1924—

88,000 K.W. on 4 occasions of 1 hour each
 905 87,000 K.W. on 2 occasions of 1 hour each
 86,000 K.W. on 2 occasions of 1 hour each

* Peak load equals kilowatt hours in any one hour

Received June 12, 1924
 Public Utilities Commission
 State of Rhode Island

906

Exhibit No. 10

907

(Stamped)
Public Utilities Commission
State of Rhode Island
Docket No. 114

**LOSS TO THE NARRAGANSETT COMPANY
UNDER SCHEDULE No. 68**

Received June 12, 1924
Public Utilities Commission
State of Rhode Island

On April 1, 1918 the Narragansett Company began to supply electricity to the Attleboro Company and has continued such supply up to the present time. Under Schedule No. 68 the charge for such electricity consisted of a price of \$.00857 per kilowatt hour subject to increase or decrease for variation in coal cost and subject to further increase or decrease for change in taxes. There are also certain payments to be made in respect of transmission lines and sub-station operation. 908

Under this schedule the loss to the Narragansett Company for the period of the contract will be \$1,-512,662.91 (see page 5). In arriving at this figure we have proceeded as follows:

The kilowatt hours sold to the Attleboro Company from 1918 to and including 1923 are taken from actual readings of meters located either at the East Providence Sub-Station or at the plant of the Attleboro Company. The kilowatt hours for 1924 are based on an ascertained demand in conjunction with the load factor of the preceding year. The kilowatt hours from 1925 to and including 1937 are as- 909

certained by using an annual growth of 10.1%. This has been the average rate of growth for the seventeen year period ending with the year 1924. Whenever necessary to ascertain the kilowatt hours at a location other than the one where they were metered, a loss between the East Providence Sub-Station and the Attleboro Company's plant of 7% is assumed.

911

The unit generating and delivery cost from 1918 to and including 1923 (see pages 6 to 9 inclusive) is obtained in the manner set forth in a previous exhibit entitled "Basis of Schedule R. I. P. U. C. No. 125". Such cost for 1924 is the same as that for 1923 allowing, however, for increased cost of fuel. Such cost for 1925 to and including 1937 (see page 10) is based upon the generating and delivery cost for 1923 substituting, however, fuel at \$4.70 per ton in place of the actual cost of such fuel.

912

The total generating and delivery cost is ascertained by multiplying the kilowatt hours sold each year as measured at the East Providence Sub-Station by the unit generating and delivery cost ascertained as above. In basing the generating cost upon fuel at \$4.70 per ton at our plant we have assumed that coal will be the fuel used and that it will cost \$4.50 per gross ton alongside our station. This, although approximately \$1.00 more than the pre-war price of coal, does not seem excessive for the next thirteen years. We have, of course, used the same alongside price of \$4.50 per gross ton in computing the cost to the Attleboro Company under Schedule No. 68. It has seemed proper to base our calculations upon the use of coal rather than oil because of the difference in the present market price

of these two forms of fuel, the likelihood of coal continuing to cost less than oil for equal thermal value and because of the rapid advances which have been made in the last year in the use of pulverized coal, which will undoubtedly enable us to obtain the same boiler capacity and efficiency with this fuel as with oil.

In computing the capital cost which should be allocated to the Attleboro Company (see pages 11 and 12) we have used a demand for the Attleboro Company from 1918 to and including 1922 ascertained by taking a load factor of 25.5%. The demands for 1923 and 1924 were ascertained as set forth in our previous exhibits. The demands from 1925 to the expiration of the period of the contract were based on the assumption that the load factor for 1925 and thereafter would be the same as that of 1923 and 1924; namely, 32.1%. 914

The generating plant cost as well as the cost of cables, transformers, ducts, sub-station and transmission line from 1918 to and including 1922 (see pages 13 to 17 and 20 to 23) were ascertained in the same general manner as the corresponding costs for 1923 and 1924 shown on our previous exhibits (see pages 18 and 19, 25 and 26). For the balance of the contract period, that is, from 1925 to and including 1937 we have assumed that the unit cost of the above mentioned property would remain of the same value as that of 1924. 915

In actual practice, unit costs fluctuate to a considerable extent due to the economic necessity of increments whether to the generating plant, sub-stations, cables or transmission lines being ordinarily of larger size than is needed for the immedi-

ate load. For instance, when the Attleboro load approaches somewhat closer to the capacity of the present line it will be necessary to provide another line which may or may not follow the present route. The unit cost of transmission facilities at this time will be at a maximum and will gradually decrease as the load increases until it is necessary to install another transmission line when the unit cost will again increase. These fluctuations in cost will continue as long as the load continues to increase. In taking a uniform unit cost we have assumed such cost to be the average over the entire period from 1925 to 1937 inclusive.

917

When it is taken into consideration that the boiler house extension at an estimated cost of \$1,050,000 used in the 1924 figures has a very slight effect on the average cost for such year, being added during the last month of the year and that such investment will have a much greater effect during 1925 and subsequently, that during 1925 a new turbo generator of possibly 30,000 K. W. capacity will be installed at an estimated cost of approximately \$1,000,000, also a new intake tunnel for condensing water costing possibly \$135,000 and further that within a few years it will be necessary to construct a new station at a different location at an initial cost of \$5,000,000 to \$7,000,000 such station having an initial capacity of possibly 30,000 to 40,000 K. W., the above figures may appear too low. We feel that they actually are too low, but wish to err in this direction.

918

The loss to the Narragansett Company for each year of the period of this contract together with the full details from which this loss was computed is shown on accompanying sheets.

Exhibit No. 10

919

LOSS TO N. E. L. Co. THROUGH SELLING ELECTRICITY UNDER R. I. P. U. C. #68.

	K. W. H. Measured At East Providence	Unit Gen- erating and Delivery Cost	Total Gen- erating and Delivery Cost	Total Capital Cost	Total Cost of Supplying Service	Net Receipts From Attle- boro Co. Under R. I. P. U. C. No. 68	Net Loss To N. E. L. Co. Under R. I. P. U. C. No. 68
(9 Mo.) 1918	3,224,946	\$.0116998	\$37,731.40	\$37,207.67	\$74,939.07	\$36,158.03	\$38,781.04
1919	5,060,860	.0117977	59,706.74	43,672.50	103,379.24	54,643.64	48,735.60
1920	5,929,570	.0116329	68,978.36	48,998.05	117,976.41	76,582.02	41,394.39
1921	5,767,848	.00988456	56,012.60	58,438.12	114,450.72	60,598.24	53,852.48
1922	7,411,960	.0079967	59,271.23	72,090.17	131,361.40	70,013.33	61,348.07
1923	10,171,600	.0075348	76,640.90	66,111.78	142,752.68	97,141.35	45,611.33
1924	10,800,000	.0077798	84,021.84	70,437.08	154,458.92	103,540.55	50,918.37
1925	11,890,800	.0059444	70,726.47	77,573.02	148,299.49	97,729.29	50,570.20
1926	13,091,771	"	77,822.72	85,405.52	163,228.24	108,250.52	54,977.72
1927	14,414,040	"	85,682.82	94,026.79	179,709.61	119,834.39	59,875.22
1928	15,869,858	"	94,336.78	103,528.51	197,865.29	132,588.23	65,277.06
1929	17,472,714	"	103,864.80	113,984.09	217,848.89	146,630.21	71,218.68
1930	19,237,458	"	114,355.15	125,485.22	239,840.37	162,090.43	77,749.94
1931	21,180,441	"	125,968.61	138,160.31	264,128.92	179,112.12	85,016.80
1932	23,319,666	"	138,621.42	152,119.42	290,740.84	197,853.01	92,887.83
1933	25,674,952	"	152,622.18	167,490.94	320,113.12	218,486.73	101,626.39
1934	26,268,122	"	168,037.02	184,404.68	352,441.70	241,204.46	111,237.24
1935	31,123,202	"	185,008.76	203,021.55	388,030.31	266,216.57	121,813.64
1936	34,266,645	"	203,694.64	225,529.05	427,223.69	293,755.12	133,468.57
1937	37,727,576	"	224,267.80	246,109.50	470,377.30	324,074.96	146,302.34
			<u>\$2,187,372.24</u>	<u>\$2,311,793.97</u>	<u>\$4,499,166.21</u>	<u>\$2,986,503.30</u>	<u>\$1,512,662.91</u>

920

921

922

Exhibit No. 10

GENERATING AND DELIVERY COST

1918	K.W.H. Delivered	Unit Price	Total Cost
April	301,613	\$.011866	\$3,578.94
May	315,914	.012124	3,830.14
June	326,882	.010932	3,573.47
July	318,710	.010537	3,358.25
August	371,720	.01041	3,869.61
September	367,419	.01114	4,093.05
October	416,989	.012668	5,282.42
November	403,011	.013335	5,374.15
December	402,688	.0118488	4,771.37
	<hr/>		<hr/>
	3,224,946		\$37,731.40

923

\$37,731.40 divided by 3,224,946 equals \$.0116998

1919			
January	424,623	.0118643	\$5,037.85
February	367,312	.0103457	3,800.10
March	393,011	.0132066	5,190.34
April	359,570	.0132913	4,748.70
May	363,333	.0144046	5,233.67
June	338,602	.012118	4,103.18
July	368,710	.0127328	4,694.71
August	422,473	.0098759	4,172.30
September	454,194	.0145894	6,626.42
October	507,849	.0100485	5,103.12
November	496,882	.0108244	5,378.45
December	564,301	.0099555	5,617.90
	<hr/>		<hr/>
	5,060,860		\$59,706.74

924

\$59,706.74 divided by 5,060,860 equals \$.0117977

GENERATING AND DELIVERY COST

1920	K.W.H. Delivered	Unit Price	Total Cost	
January	560,000	\$.0093628	\$5,243.17	
February	459,785	.009663	4,442.90	
March	524,839	.0112463	5,902.50	
April	493,011	.0113506	5,595.97	
May	470,753	.0145361	6,842.91	
June	484,516	.0125891	6,049.26	
July	541,935	.0128028	6,938.29	
August	381,935	.0116881	4,464.09	
September	528,602	.0110769	5,855.27	
October	523,548	.0106423	5,571.75	
November	486,022	.0123178	5,986.72	926
December	474,624	.0128218	6,085.53	
	<u>5,929,570</u>		<u>\$68,978.36</u>	

\$68,978.36 divided by 5,929,570 equals \$.0116329

1921				
January	476,129	.0124522	\$5,971.71	
February	423,656	.010796	4,573.87	
March	463,763	.014999	6,955.98	
April	447,900	.0108434	4,856.76	
May	426,900	.0113273	4,835.62	
June	416,500	.0080243	3,342.12	
July	375,500	.0086126	3,234.03	
August	453,900	.0076296	3,463.08	927
September	498,300	.0074255	3,700.13	
October	578,100	.0076922	4,446.86	
November	586,300	.0087924	5,154.98	
December	620,900	.0088218	5,477.46	
	<u>5,767,840</u>		<u>\$56,012.60</u>	

\$56,012.60 divided by 5,767,840 equals \$.00988456

928

Exhibit No. 10

GENERATING AND DELIVERY COST

	1922	K.W.H. Delivered	Unit Price	Total Cost
	January	613,700	\$.0084628	\$5,193.62
	February	550,500	.0089969	4,952.79
	March	599,360	.0095218	5,706.99
	April	517,700	.0105029	5,437.35
	May	521,700	.0100840	5,260.82
	June	527,500	.0096203	5,074.71
	July	449,700	.0076202	3,426.80
	August	565,200	.0069474	3,926.67
	September	570,600	.0069401	3,960.02
	October	733,400	.0065339	4,791.96
929	November	880,500	.0064246	5,656.86
	December	882,100	.0066689	5,882.64
		<hr/> 7,411,960		<hr/> \$59,271.23

\$59,271.23 divided by 7,411,960 equals \$.0079967

930

GENERATING AND DELIVERY COST

1923	K.W.H. Delivered	Unit Price	Total Cost	
January	934,200	.0070293	\$6,566.77	
February	829,100	.0069171	5,734.97	
March	872,500	.0072709	6,343.86	
April	794,400	.0083663	6,646.19	
May	795,800	.0083186	6,619.94	
June	733,800	.0073047	5,360.19	
July	704,100	.0071113	5,007.07	
August	758,500	.0070595	5,354.63	
September	783,100	.0074808	5,858.21	
October	979,500	.0075158	7,361.73	
November	930,500	.0075019	6,980.52	
December	1,056,100	.008339	8,806.82	932
	<u>10,171,600</u>		<u>\$76,640.90</u>	

\$76,640.90 divided by 10,171,600 equals \$.0075348

1924

Increase above unit cost of \$.0075348 by \$.000245 to allow for increased fuel cost of 1924 over 1923 equals a unit cost at East Providence Sub-Station for 1924 of \$.0077798.

The addition due to increased fuel cost is on the same basis as that shown in our Exhibit #1 corrected for a 2% loss between the generating station and the East Providence Sub-Station. 933

Exhibit No. 10

ESTIMATED GENERATING AND DELIVERY COST FOR 1925-1937

	A	B	C	D	E	F	G	H	I	J
Month	Total Gen- erating and Delivery Cost	Cost of Fuel	Balance A—B	Tons of Fuel	Dx\$4.70	C plus E	Output Of Plant K.W.H.	Divided By G Plus One Mill	Attle- boro K.W.H.	H x I
January	\$179,658.57	\$135,185.41	\$44,573.16	19,871.44	\$13,395.77	\$137,968.93	29,797,599	\$.0056302	934,200	\$4,547.70
February	178,566.52	137,540.25	41,026.27	19,812.77	93,120.02	134,146.29	30,176,099	.0054451	829,100	4,514.53
March	175,245.92	129,862.29	45,383.63	18,783.23	88,290.58	133,674.21	27,946,094	.0057833	872,500	5,045.93
April	145,713.65	102,568.52	43,145.13	14,627.57	68,749.58	111,894.71	19,781,234	.0066566	794,400	5,288.00
May	155,683.67	107,424.53	48,259.14	15,657.27	73,589.17	121,848.31	21,272,191	.006728	795,800	5,354.14
June	180,156.93	137,021.16	43,135.77	19,947.76	93,754.47	136,890.24	28,575,140	.0057905	733,800	4,249.07
July	195,132.26	150,214.46	44,917.80	22,393.33	105,248.65	150,166.45	31,929,893	.005703	704,100	4,015.48
August	234,894.20	185,000.49	48,993.71	27,254.14	126,094.46	177,088.17	38,764,576	.0055683	758,500	4,223.56
September	220,954.55	170,628.11	50,326.44	24,480.36	115,057.69	165,384.13	34,093,591	.0058509	783,100	4,581.84
October	241,434.87	183,505.14	57,929.73	26,080.89	122,580.18	180,509.91	37,053,662	.0058716	979,500	5,751.23
November	192,844.17	140,491.30	52,352.87	20,639.24	97,004.43	149,357.30	29,659,671	.0060357	930,500	5,616.22
December	169,850.43	108,395.62	61,454.81	15,926.48	74,854.46	136,399.27	23,143,507	.0068897	1,056,100	7,276.21
	\$2,270,135.74			245,476.48		352,195.227			10,171,600	\$60,463.91

\$60,463.91 divided by 10,171,600 equals \$.0059444

All data other than the \$4.70 coal price and figures based thereon are for the year 1923

FIXED CHARGES ON INVESTMENT CHARGEABLE TO THE ATTLEBORO
STEAM & ELECTRIC CO.

Year	A Attleboro Demand Measured At E. Prov.	B Depreciated Unit Cost of Gen- erating Plant	C Depreciated Unit Cost of Cables, Transform- ers, Duct and Sub-Station	D B Plus C	E D x A	F E x 5 1/4 %
1918	1,925	\$77.53	\$16.11	\$93.64	\$180,257.00	\$9,463.49
1919	2,266	81.46	19.14	100.60	227,959.60	11,678.79
1920	2,654	81.05	18.45	99.50	264,073.00	13,863.83
1921	2,580	108.79	18.65	127.44	328,795.20	17,261.75
1922	3,318	109.33	18.52	127.85	424,206.30	22,270.83
1923	3,600	88.81	18.85	107.66	387,576.00	20,347.74
1924	3,840	89.15	19.70	108.85	417,984.00	21,944.16
1925	4,229	89.15	19.70	108.85	460,326.65	24,167.15
1926	4,656	89.15	19.70	108.85	506,805.60	26,607.29
1927	5,126	"	"	"	557,965.10	29,293.17
1928	5,644	"	"	"	614,349.40	32,253.34
1929	6,214	"	"	"	676,393.90	35,510.68
1930	6,841	"	"	"	744,642.85	39,093.75
1931	7,532	"	"	"	819,658.20	43,042.56
1932	8,293	"	"	"	902,693.05	47,391.39
1933	9,131	"	"	"	993,909.35	52,180.24
1934	10,053	"	"	"	1,094,269.05	57,449.12
1935	11,068	"	"	"	1,204,751.80	63,249.47
1936	12,186	"	"	"	1,326,446.10	69,638.42
1937	13,417	"	"	"	1,460,440.45	76,673.12

Exhibit No. 10

FIXED CHARGES ON INVESTMENT CHARGEABLE TO THE ATTLEBORO STEAM & ELECTRIC CO.

	G	H	I	J	K	L	M	N
	K.W. Cost Trans- mission Line	Depreciated Value of Transmission Line	Fixed Charges On H @ 7%	Total Fixed Charges F Plus I	Total Invest- ment E Plus H	Return 8% of K	Corrected For Income Tax L Divided by 87½%	Total Capital Cost J Plus M
1918	\$36.25	\$69,774.08	\$4,884.19	\$14,347.68	\$250,031.08	\$20,002.49	\$22,859.99	\$37,207.67
1919	30.49	69,081.22	4,835.69	16,514.48	297,040.82	23,763.27	27,158.02	43,672.50
1920	25.65	68,082.09	4,765.75	18,629.58	332,155.09	26,572.41	30,368.47	48,998.05
1921	26.69	68,854.55	4,819.82	22,081.57	397,649.75	31,811.98	36,356.55	58,438.12
1922	20.60	68,356.99	4,784.99	27,055.82	492,563.29	39,405.06	45,034.35	72,090.17
1923	17.77	63,981.96	4,478.74	24,826.48	451,577.96	36,126.23	41,287.20	66,111.78
1924	16.58	63,664.30	4,456.50	26,400.66	481,648.30	38,531.86	44,036.42	70,437.08
1925	"	70,116.82	4,908.18	29,075.33	530,443.47	42,435.48	48,497.69	77,573.02
1926	"	77,196.48	5,403.75	32,011.04	584,002.08	46,720.17	53,394.48	85,405.52
1927	"	84,989.08	5,949.24	35,242.41	642,954.18	51,436.33	58,784.38	94,026.79
1928	"	93,577.52	6,550.43	38,803.77	707,926.92	56,634.15	64,724.74	103,528.51
1929	"	103,028.12	7,211.97	42,722.65	779,422.02	62,353.76	71,261.44	113,984.09
1930	"	113,423.76	7,939.66	47,033.41	858,066.63	68,645.33	78,451.81	125,485.22
1931	"	124,880.56	8,741.64	51,784.20	944,738.76	75,579.10	86,376.11	138,160.31
1932	"	137,497.94	9,624.86	57,016.25	1,040,190.99	83,215.27	95,103.17	152,119.42
1933	"	151,391.98	10,597.44	62,777.68	1,145,301.33	91,624.11	104,713.26	167,490.94
1934	"	166,687.40	11,668.12	69,117.24	1,260,956.45	100,876.51	115,287.44	184,404.68
1935	"	183,507.44	12,845.52	76,094.99	1,388,259.24	111,060.74	126,926.56	203,021.55
1936	"	202,643.88	14,143.07	83,781.49	1,528,489.98	122,279.20	139,747.65	223,529.14
1937	"	222,453.86	15,571.77	92,244.89	1,682,894.31	134,631.54	153,864.61	246,109.50

Exhibit No. 10

943

"GENERATING PLANT" DATA

1918	Book Value of "Generat- ing Plant"	Reserve for Depreciation	Depreciated Book Value of "Generat- ing Plant"	Peak Primary Load*	Unit Cost
April 1st	\$2,622,405.65	\$102,924.89	\$2,519,480.76	33,000 KW	\$76.35
May 1st	2,649,710.92	109,378.58	2,540,332.34	33,000 KW	76.98
June 1st	2,661,584.79	115,783.70	2,545,801.09	33,000 KW	77.15
July 1st	2,705,468.07	123,903.26	2,581,564.81	33,000 KW	78.23
August 1st	2,706,504.62	130,372.23	2,576,132.39	33,000 KW	78.06
September 1st	2,707,809.00	136,812.91	2,570,996.09	33,000 KW	77.91
October 1st	2,711,056.83	143,273.56	2,567,783.27	33,000 KW	77.81
November 1st	2,713,519.13	148,441.72	2,565,077.41	33,000 KW	77.73
December 1st	2,714,465.33	154,872.20	2,559,593.13	33,000 KW	77.56

*Estimated. Peak primary loads were not taken prior to December, 1919.

944

Average Unit Cost \$77.53

945

Exhibit No. 10

"GENERATING PLANT" DATA

	Book Value of "Generat- ing Plant"	Reserve for Depreciation	Depreciated Book Value of "Generat- ing Plant"	Peak Primary Load*	Unit Cost
1919					
January 1st	\$2,870,901.10	\$160,705.08	\$2,710,196.02	36,000 KW	\$75.28
February 1st	2,929,090.13	167,951.92	2,761,138.21	36,000 KW	76.70
March 1st	2,925,868.39	171,141.73	2,754,726.66	36,000 KW	76.52
April 1st	3,058,750.89	178,594.48	2,880,156.41	36,000 KW	80.00
May 1st	3,061,296.11	185,031.45	2,876,266.66	36,000 KW	79.90
June 1st	3,050,867.03	179,252.77	2,871,614.26	36,000 KW	79.77
July 1st	3,060,551.99	184,514.27	2,876,037.72	36,000 KW	79.89
August 1st	3,063,618.89	190,677.93	2,872,940.96	36,000 KW	79.80
September 1st	3,296,894.92	182,879.70	3,114,015.22	36,000 KW	86.50
October 1st	3,330,371.32	189,187.53	3,141,183.79	36,000 KW	87.26
947 November 1st	3,339,211.44	195,883.00	3,143,328.44	36,000 KW	87.31
December 1st	3,394,089.04	204,049.51	3,190,039.53	36,000 KW	88.61

*Estimated. Peak primary loads were not taken prior to December, 1919.

Average Unit Cost \$81.46

Exhibit No. 10

949

"GENERATING PLANT" DATA

1920	Book Value of "Generat- ing Plant"	Reserve for Depreciation	Depreciated Book Value of "Generat- ing Plant"	Peak Primary Load	Unit Cost
January 1st	\$3,407,893.40	\$210,095.31	\$3,197,798.09	39,286 KW	\$81.40
February 1st	3,408,673.84	216,704.90	3,191,968.94	39,286 "	81.25
March 1st	3,401,953.06	230,189.51	3,171,763.49	39,286 "	80.74
April 1st	3,372,952.38	228,149.15	3,144,803.23	39,286 "	80.05
May 1st	3,311,101.88	229,126.86	3,081,975.02	39,286 "	78.45
June 1st	3,315,212.06	234,786.40	3,080,425.66	39,286 "	78.41
July 1st	3,317,414.40	241,656.10	3,075,758.30	39,286 "	78.29
August 1st	3,314,163.86	227,940.83	3,086,223.03	39,286 "	78.56
September 1st	3,538,254.47	253,283.25	3,284,971.22	39,286 "	83.62
October 1st	3,552,531.21	265,288.04	3,287,243.17	39,286 "	83.67
November 1st	3,583,621.79	277,003.94	3,306,617.85	39,286 "	84.17
December 1st	3,589,481.63	290,121.25	3,299,360.38	39,286 "	83.98

950

Average Unit Cost \$81.05

951

952

Exhibit No. 10

"GENERATING PLANT" DATA

	1921	Book Value of "Generat- ing Plant"	Reserve for Depreciation	Depreciated Book Value of "Generat- ing Plant"	Peak Primary Load	Unit Cost
	January 1st	\$3,605,731.87	\$302,705.81	\$3,303,026.06	35,578 KW	\$92.84
	February 1st	4,145,241.67	321,424.94	3,823,816.73	35,578 "	107.48
	March 1st	4,213,668.02	334,868.69	3,878,799.33	35,578 "	109.02
	April 1st	4,247,191.22	349,007.73	3,898,183.49	35,578 "	109.57
	May 1st	4,310,226.04	359,125.06	3,951,100.98	35,578 "	111.05
	June 1st	4,338,288.10	373,665.74	3,964,622.36	35,578 "	111.43
	July 1st	4,349,267.54	387,892.45	3,961,375.09	35,578 "	111.34
	August 1st	4,363,416.64	406,145.39	3,957,271.25	35,578 "	111.23
	September 1st	4,374,267.27	423,488.16	3,950,779.11	35,578 "	111.05
	October 1st	4,377,089.97	444,358.34	3,932,731.63	35,578 "	110.54
953	November 1st	4,385,779.51	462,336.32	3,923,443.19	35,578 "	110.28
	December 1st	4,387,206.72	486,625.03	3,900,581.69	35,578 "	109.63

Average Unit Cost \$108.79

954

Exhibit No. 10

955

"GENERATING PLANT" DATA

1922	Book Value of "Generat- ing Plant"	Reserve for Depreciation	Depreciated Book Value of "Generat- ing Plant"	Peak Primary Load	Unit Cost
January 1st	\$5,309,842.69	\$520,601.10	\$4,789,241.59	45,465 KW	\$105.34
February 1st	5,566,541.95	549,134.35	5,017,407.60	45,465 "	110.36
March 1st	5,577,871.67	572,736.52	5,005,135.15	45,465 "	110.09
April 1st	5,581,510.94	598,155.24	4,983,355.70	45,465 "	109.61
May 1st	5,589,751.18	617,562.72	4,972,188.46	45,465 "	109.36
June 1st	5,597,738.29	631,318.59	4,966,419.70	45,465 "	109.24
July 1st	5,624,205.93	650,212.23	4,973,993.70	45,465 "	109.40
August 1st	5,630,165.91	667,523.39	4,962,642.52	45,465 "	109.15
September 1st	5,681,968.30	685,623.64	4,996,344.66	45,465 "	109.89
October 1st	5,702,422.21	702,625.26	4,999,796.95	45,465 "	109.97
November 1st	5,711,307.18	715,290.15	4,996,017.03	45,465 "	109.89
December 1st	5,713,003.72	727,864.83	4,985,138.89	45,465 "	109.65

956

Average Unit Cost \$109.33

957

"GENERATING PLANT" DATA

	Book Value of "Generat- ing Plant"	Reserve for Depreciation	Depreciated Book Value of "Generat- ing Plant"	Peak Primary Load	Unit Cost
1923					
January 1st	\$5,487,949.73	\$572,078.24	\$4,915,871.49	55,000 KW	\$89.38
February 1st	5,497,975.30	584,520.70	4,913,454.60	55,000 "	89.34
March 1st	5,501,592.72	596,873.46	4,904,719.26	55,000 "	89.18
April 1st	5,583,826.27	610,384.24	4,973,442.03	55,300 "	89.94
May 1st	5,598,459.98	623,108.55	4,975,351.43	55,300 "	89.97
June 1st	5,607,790.82	609,430.49	4,998,360.33	55,300 "	90.39
July 1st	5,627,291.12	622,328.47	5,004,962.65	55,300 "	90.51
August 1st	5,629,352.20	637,931.04	4,991,421.16	55,300 "	90.26
September 1st	5,626,089.14	646,501.91	4,979,587.23	55,300 "	90.05
October 1st	5,624,050.27	659,084.69	4,964,965.58	55,300 "	89.78
959 November 1st	5,626,123.95	671,041.67	4,955,082.28	55,300 "	89.60
December 1st	5,628,876.60	682,790.30	4,946,086.30	63,970 "	77.32

Average Unit Cost \$88.81†

Exhibit No. 10

961

"GENERATING PLANT" DATA

1924	Book Value of "Generat- ing Plant"	Reserve for Depreciation	Depreciated Book Value of "Generat- ing Plant"	Peak Primary Load	Unit Cost
January 1st	\$5,699,317.47	\$693,401.68	\$5,005,915.79	63,970 KW	\$78.25
February 1st	5,719,572.96	705,265.38	5,014,307.58	63,970 "	78.39
March 1st	6,479,822.96	716,804.05	5,763,018.91	64,615 "	89.19
April 1st	6,482,072.96	731,211.60	5,750,861.36	64,615 "	89.00
May 1st	6,484,322.96	745,588.75	5,738,734.21	64,615 "	88.81
June 1st	6,611,572.96	759,935.59	5,851,637.37	64,615 "	90.56
July 1st	6,613,822.96	774,564.68	5,839,258.28	64,615 "	90.37
August 1st	6,616,072.96	789,162.83	5,826,910.13	64,615 "	90.18
September 1st	6,618,322.96	803,730.11	5,814,592.85	64,615 "	89.99
October 1st	6,620,572.96	818,266.59	5,802,306.37	64,615 "	89.80
November 1st	6,622,822.96	832,772.36	5,790,050.60	64,615 "	89.61
December 1st	7,675,072.96	847,247.49	6,827,825.47	64,615 "	105.67

962

Average Unit Cost \$89.15

963

1918

TRANSFORMATION AND TRANSMISSION DATA

Transformers	X 1586	\$25,378.95	
Cables	App.	19,916.25	
	X 1514	14,902.03	
	X 1586	43,519.91	
Duct—48,780 ft. @ 50c		24,390.00	
		<u>\$128,107.14</u>	
Less Depreciation		5,028.43	\$123,078.71 divided by 10,800 equals \$11.40
Sub-Station, East Providence			
Land, April 1, 1918		1,327.00	
Structure April 1, 1918		25,303.70	
Equipment " " "		42,933.54	
		<u>\$69,564.24</u>	
Less Street Lighting		16,842.13	
		<u>\$52,722.11</u>	
Less Depreciation		2,904.92	\$49,817.19 divided by 10,800 less 220 or 10,580 equals \$4.71
Estimated Total Load	10,800 K.W.		
Street Lighting Demand	220		
	<u>10,580 K.W.</u>		
Attleboro Load	1,925 K.W.		
Transmission Line		\$73,886.23	
Less Depreciation		4,112.15	
		<u>\$69,774.08</u>	divided by 1925 K.W. equals \$36.25

1919

TRANSFORMATION AND TRANSMISSION DATA

Transformers	X 1586	\$25,378.95	
Cables	App.	19,916.25	
	X 1514	14,902.03	
	X 1586	43,519.91	
Duct—48,780 ft. @ 50c		24,390.00	
		<hr/>	
		\$128,107.14	
Less Depreciation		7,172.57	\$120,934.57 divided by 10,800 equals \$11.20
Sub-Station, East Providence			
Land, 1/1/19		1,327.00	
Structure, 1/1/19		25,537.30	
Equipment, 1/1/19		69,092.63	
		<hr/>	
		\$95,956.93	
Less Street Lighting		16,842.13	
		<hr/>	
		\$79,114.80	
Less Depreciation		5,138.03	\$73,976.77 divided by 10,580 equals \$7.94
Estimated Total Load	10,800 K.W.		
Street Lighting Demand	220		
	<hr/>		
	10,580 K.W.		
Attleboro Load	2,266 K.W.		
Transmission Line		\$73,886.32	
Less Depreciation		4,805.01	
		<hr/>	
		\$69,081.22	divided by 2,266 K.W. equals \$30.49

968

969

Exhibit No. 10

1920

TRANSFORMATION AND TRANSMISSION DATA

Transformers	X 1586	\$25,378.95	
Cables	App.	19,916.25	
	X 1514	14,902.03	
	X 1586	43,519.91	
Duct—48780 ft @ 50c		24,390.00	
		<u>\$128,107.14</u>	
Less Depreciation		7,891.50	\$120,215.64 divided by 10,800 equals \$11.13
Sub-Station, East Providence			
Land, 1/1/20		1,327.00	
Structure, 1/1/20		25,748.05	
Equipment, 1/1/20		73,803.77	
		<u>\$100,878.82</u>	
Less Street Lighting		16,842.13	
		<u>\$84,036.69</u>	
Less Depreciation		6,590.11	\$77,446.58 divided by 10,580 equals \$7.32
Estimated Total Load	10,800 K.W.		
Street Lighting Demand	220		
	<u>10,580 K.W.</u>		
Attleboro Load	2,654 K.W.		
Transmission Line		73,886.23	
Less Depreciation		5,804.14	
		<u>\$68,082.09</u>	divided by 2,654 K.W. equals \$25.65

1921

TRANSFORMATION AND TRANSMISSION DATA

Transformers	X 1586	\$25,378.95	
	X 1621	16,230.84	
Cables	App.	19,916.25	
	X 1514	14,902.03	
	X 1536	43,519.91	
	X 1621	22,687.65	
Duct—60,975 ft. @ 50c		30,487.50	
		<u>\$173,123.13</u>	
Less Depreciation		14,545.99	\$158,577.14 divided by 13,000 equals \$12.20
Sub-Station, East Providence			
Land, 1/1/21		1,327.00	
Structure, 1/1/21		25,757.05	
Equipment, 1/1/21		78,266.49	974
		<u>\$105,350.53</u>	
Less Street Lighting		16,842.13	
		<u>\$88,508.40</u>	
Less Depreciation		6,020.04	
		<u>\$82,488.36</u>	divided by 12,780 equals \$6.45
Estimated Total Load	13,000 K.W.		
Street Lighting Demand	220		
	<u>12,780 K.W.</u>		
Attleboro Load	2,580 K.W.		
Transmission Line		\$73,886.23	
Less Depreciation		5,031.68	
		<u>\$68,854.55</u>	divided by 2,580 K.W. equals \$26.69

976

Exhibit No. 10

1922

TRANSFORMATION AND TRANSMISSION DATA

Transformers	X 1586	\$25,378.95	
	X 1621	16,230.84	
Cables	App.	19,916.25	
	X 1514	14,902.03	
	X 1586	43,519.91	
	X 1621	22,687.65	
Duct—60,975 ft. @ 50c		30,487.50	
		<u>\$173,123.13</u>	
Less Depreciation		16,984.46	\$156,133.67 divided by 13,000 equals \$12.01
Sub-Station, East Providence			
Land, 1/1/22		1,793.15	
Structure, 1/1/22		25,748.05	
Equipment, 1/1/22		79,242.83	
		<u>\$106,784.03</u>	
Less Street Lighting		16,842.13	
		<u>\$89,941.90</u>	
Less Depreciation		6,770.49	\$83,171.41 divided by 12,780 equals \$6.51
Estimated Total Load	13,000 K.W.		
Street Lighting Demand	220		
	<u>12,780 K.W.</u>		
Attleboro Load	3,318 K.W.		
Transmission Line		73,886.23	
Less Depreciation		5,529.24	
		<u>\$68,356.99</u>	divided by 3,318 K.W. equals \$20.60

978

1923

TRANSFORMATION AND TRANSMISSION DATA

3—5,000 K.V.A. Transformers	X 1621	\$16,230.84	
	X 1586	25,378.95	
5—Cables	X 1514	14,902.03	
	X 1586	43,519.91	
	X 1621	22,687.65	
	X 2540	18,415.18	
Duct—60,975 feet @ 50c		30,487.50	
		<hr/>	
		\$171,622.06	
Less Depreciation		17,902.59	\$153,719.47 divided by 13,000 equals \$11.82
		<hr/>	
Sub-Station, East Providence			
Land, 1/1/23		\$1,793.15	
Structure, 1/1/23		25,757.05	
Equipment, 1/1/23		89,657.24	980
		<hr/>	
		\$117,207.44	
Less Street Lighting		16,842.13	
		<hr/>	
		\$100,365.31	
Less Depreciation		10,459.94	
		<hr/>	
		\$89,905.37	divided by 12,780 equals \$7.03
Transmission Line		\$73,886.23	
Less Depreciation		9,904.27	
		<hr/>	
		\$63,981.96	divided by 3,600 K.W. equals \$17.77 per KW

Exhibit No. 10

1924

TRANSFORMATION AND TRANSMISSION DATA.

3—5,000 K.V.A. Transformers	X 1621	\$16,230.84	
	X 1586	25,378.95	
5—Cables	X 1514	14,902.03	
	X 1586	43,519.91	
	X 1621	22,687.65	
	X 2540	18,415.18	
Duct—60,975 feet @ 50c		30,487.50	
		<u>\$171,622.06</u>	
Less Depreciation		20,869.24	\$150,752.82 divided by 13,000 equals \$11.60
Sub-Station, East Providence			
Land, Book Value 3/1/24		\$1,793.15	
Structure, Book Value 3/1/24		28,487.58	
Equipment, Book Value 3/1/24		104,447.92	
		<u>\$134,728.65</u>	
Less Street Lighting, Land, Building & Equipment		16,886.52	
		<u>\$117,842.13</u>	
Less Depreciation		14,329.60	\$103,512.53 divided by 12,780 equals \$8.10
Estimated Total Load	13,000 K.W.		
Street Lighting Demand	220 "		
	<u>12,780 K.W.</u>		
Attleboro Load	3,840 K.W.		
Transmission Line X 1595, N. E. L. Co. share only		\$73,886.23	
Less Depreciation		<u>10,221.84</u>	
		\$63,664.39	divided by 3,840 KW equals \$16.58

RECEIPT FROM ATTLEBORO STEAM & ELECTRIC CO. UNDER R. I.
P. U. C. #68.

Year	K.W.H. Measured at Attleboro	Base Rate	Average Coal Cost	Net Rate Per KWH	Total Annual Charges	Amount of Sub- Station & Line Rental Charges	Net Receipts From Attleboro Co.
(9 Mo.) 1918	2,999,200	\$.00857	\$9.49*	.013666*	\$40,988.96	\$4,830.93	\$36,158.03
1919	4,706,600	"	8.69*	.0129796*	61,084.89	6,441.25	54,643.64
1920	5,514,500	"	11.13*	.0150554*	83,023.27	6,441.25	76,582.02
1921	5,364,099	"	12.05**	.015839*	67,039.49	6,441.25	60,598.24
			7.80	.012225			
1922	6,893,123	"	7.80**	.012225	76,454.58	6,441.25	70,013.33
			6.05	.01070735			
1923	9,459,588	"	6.05**	.01070735	103,582.60	6,441.25	97,141.35
			6.30	.01095			
1924	10,044,000	"	6.30	.01095	109,981.80	6,441.25	103,540.55
1925	11,058,444	"	4.50	.00942	104,170.54	6,441.25	97,729.29
1926	12,175,347	"	"	.00942	114,691.77	6,441.25	108,250.52
1927	13,405,057	"	"	.00942	126,275.64	6,441.25	119,834.39
1928	14,758,968	"	"	"	139,029.48	6,441.25	132,588.23
1929	16,249,624	"	"	"	153,071.46	"	146,630.21
1930	17,890,836	"	"	"	168,531.68	"	162,090.43
1931	19,697,810	"	"	"	185,553.37	"	179,112.12
1932	21,687,289	"	"	"	204,294.26	"	197,853.01
1933	23,877,705	"	"	"	224,927.98	"	218,486.73
1934	26,289,353	"	"	"	247,645.71	"	241,204.46
1935	28,944,578	"	"	"	272,657.92	"	266,216.67
1936	31,867,980	"	"	"	300,196.37	"	293,755.12
1937	35,086,646	"	"	"	330,516.21	"	324,074.96

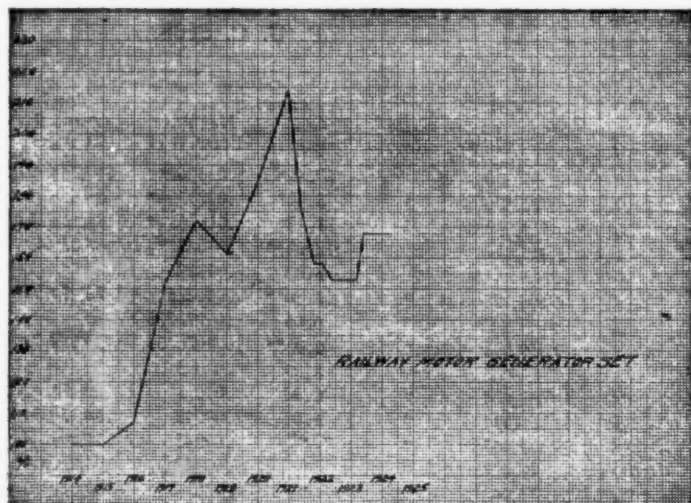
*Average for year.

**To April 1st.

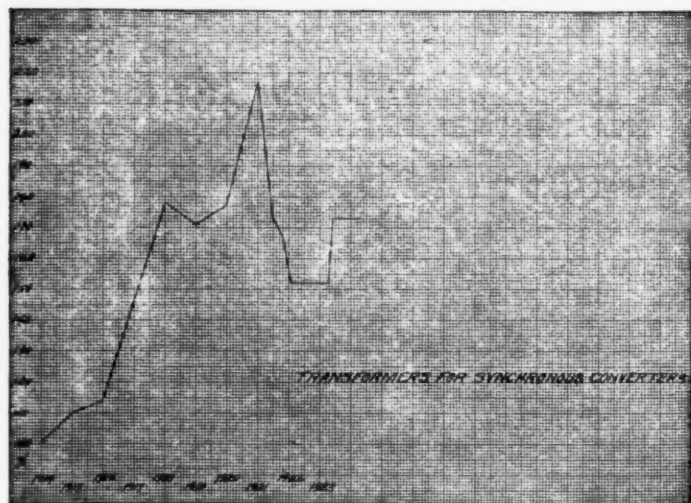
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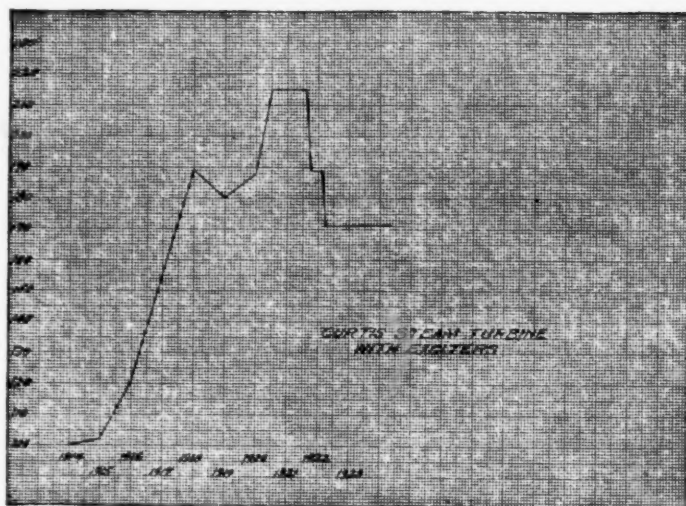
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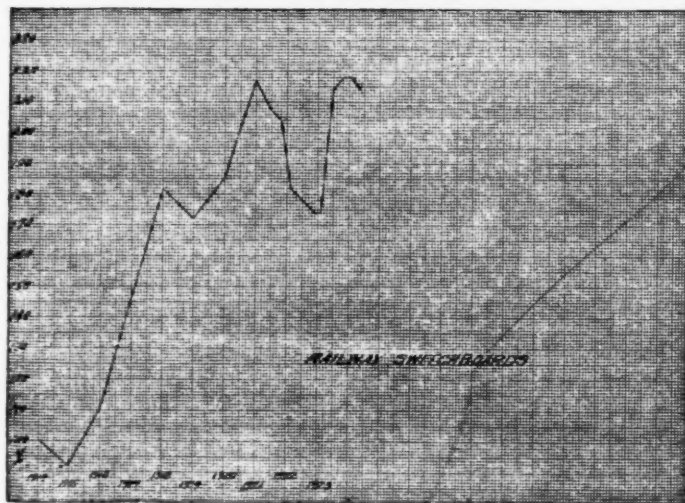


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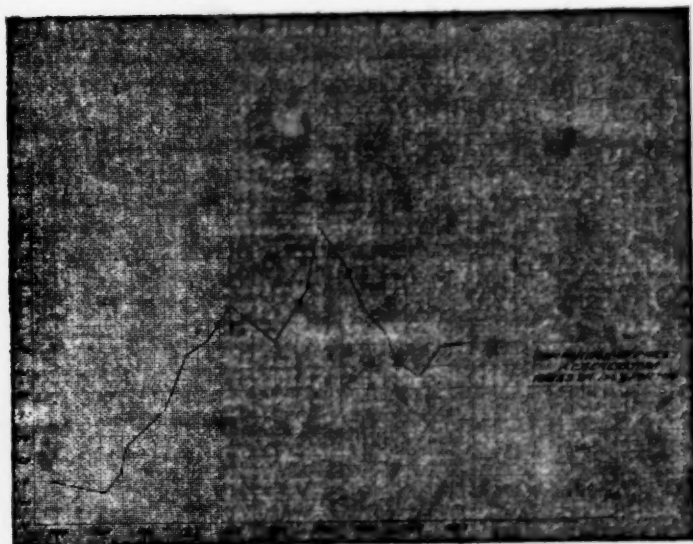


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Exhibit No. 11



Trend of Electrical Construction Costs

Price Fluctuations of Major Items Composing Electric Light and Power Construction Work During Past Twelve Years—Index Curves Facilitate Estimates of Past and Future Construction

By WILLIAM W. HANDY
Consulting Engineer, Baltimore, Md.

IN CONNECTION with a valuation made by the author of this paper in the last three years, covering the property of a large gas and electric light and power public utility company in the Middle Atlantic States, there was occasion for the preparation of a rather unusually elaborate set of cost analyses of construction work, involving the determination of the relative costs of the several major elements making up the totals of various capital accounts, together with the unit costs of all of these elements and the percentage fluctuations in these costs over a period of years from 1911 to 1922 inclusive. During this period, as is well known, prices rose from the pre-war normal level to the war and post-war peaks, and subsequently fell to the minimum post-war level in 1921, from which in turn they have been on the average increasing to a greater or less extent during the year 1922, with the exception of equipment generally, the price trend of which has been downward.

As these cost analyses were prepared on an unusually

material factors entering into the construction of a property and the price trend of each different kind of construction work, together with the price trend of the property as a whole, including buildings, power-plant and substations equipment, distribution system and all other items, including customers' installations. Furthermore, by the periodic posting of these index numbers and charts it appeared that the trend of construction costs could be continued and a record made which would be of permanent value through future years. While information similar to this is available in the form of the well-known cost indexes published by the United States Department of Labor and by the Bradstreet and Dun organizations and others, and while certain manufacturing and construction companies also maintain such records for the apparatus which they manufacture and for the work which they do, it appears that there is no similar service in effect especially applicable to public utility properties such as those of electric light and power companies. With this end in view the cost analyses made of the electric division of the public utility property in question have been used to prepare the cost-index charts presented in this paper, a brief explanation being herewith presented to set forth as clearly as possible the method used in the making of the analyses and in the preparation of the charts.

Buildings.—Costs of buildings, divided into reinforced concrete and brick types of construction as erected by the company.

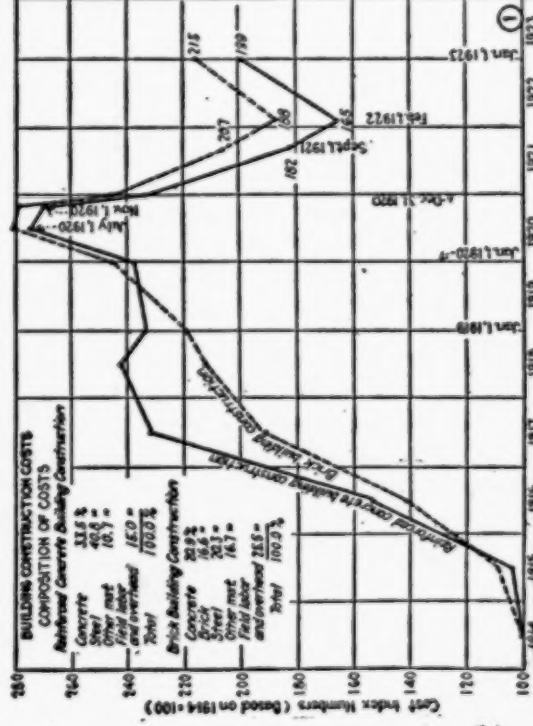
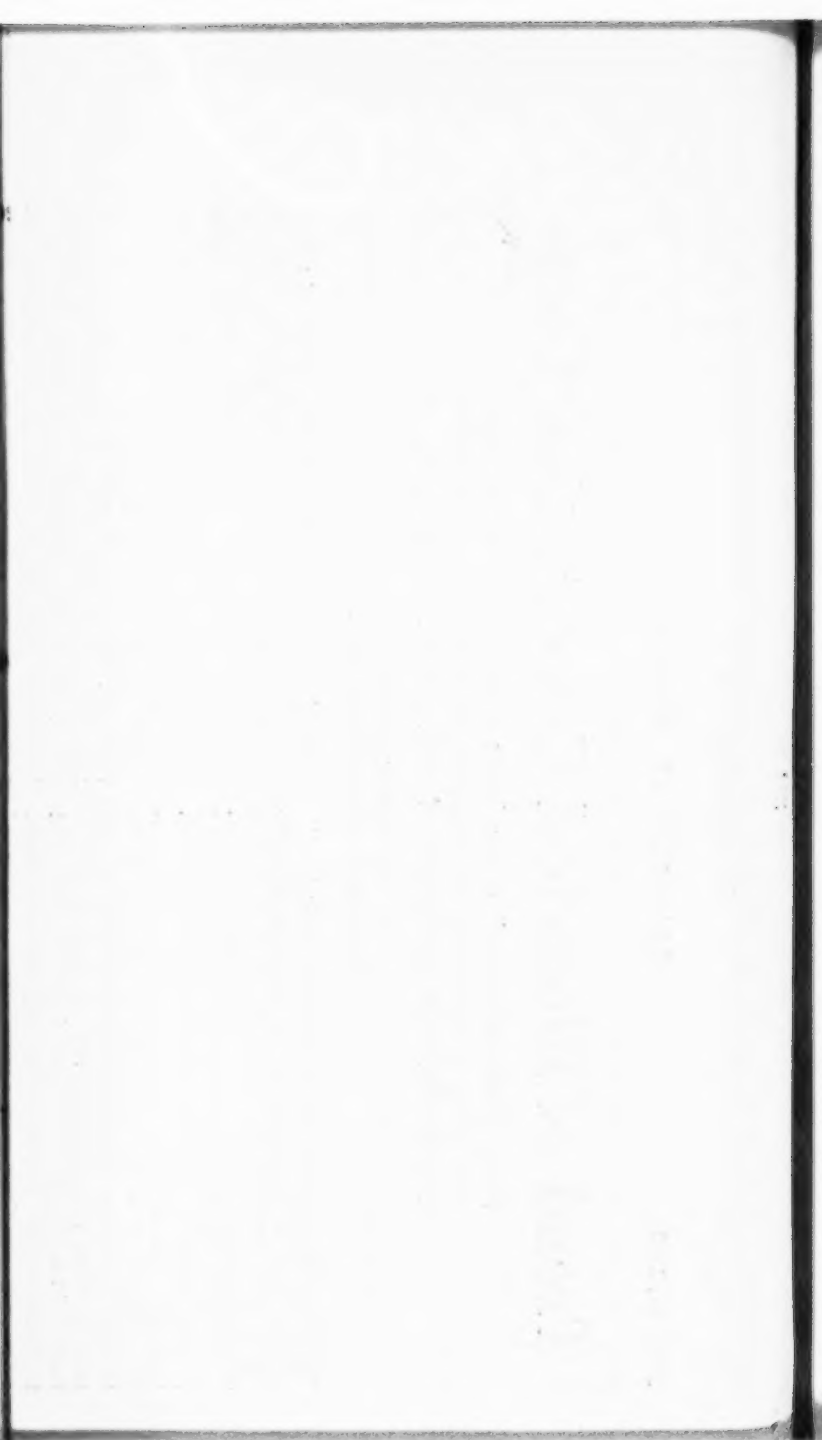


FIG. 1.—BRICK AND CONCRETE CONSTRUCTION NOW 65 TO 81 POINTS BELOW PEAK PRICE AND RISING

FIG. 2.—LABOR COSTS HIGHER THAN IN FEBRUARY, 1922, BUT RISING

comprehensive scale and covered such an extended period, it appeared that they afforded an excellent opportunity for the preparation of cost-index numbers and cost-index charts which would be of value to the industry and which would make it possible to tell at a glance the price trend of all major labor and





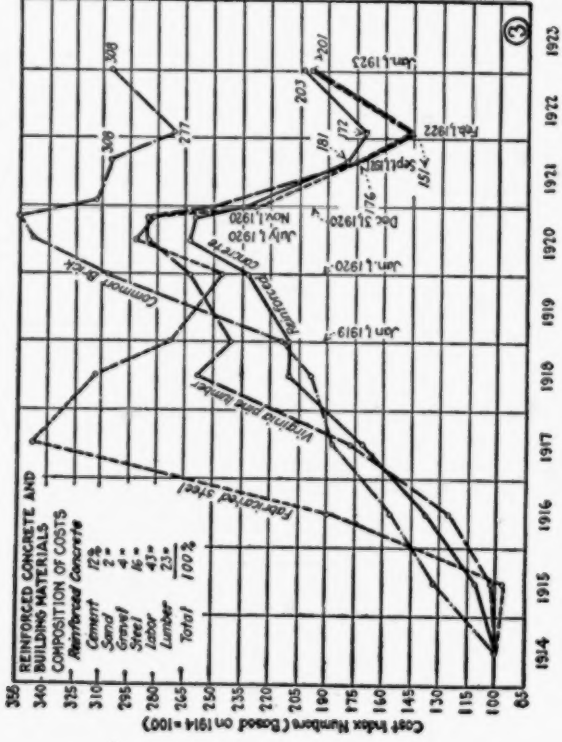


FIG. 3—OF ALL BUILDING MATERIALS BRICK HAS REDUCED LEAST

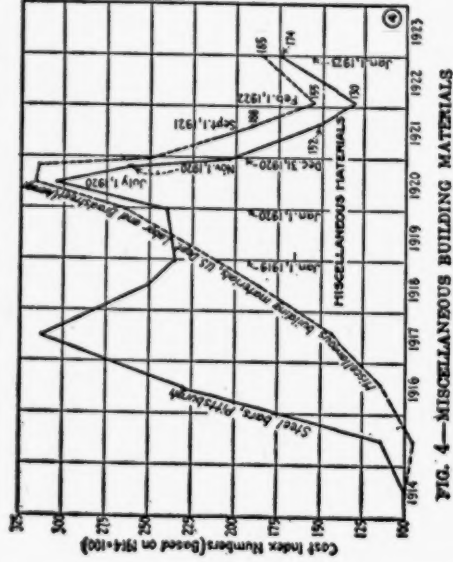


FIG. 4—MISCELLANEOUS BUILDING MATERIALS

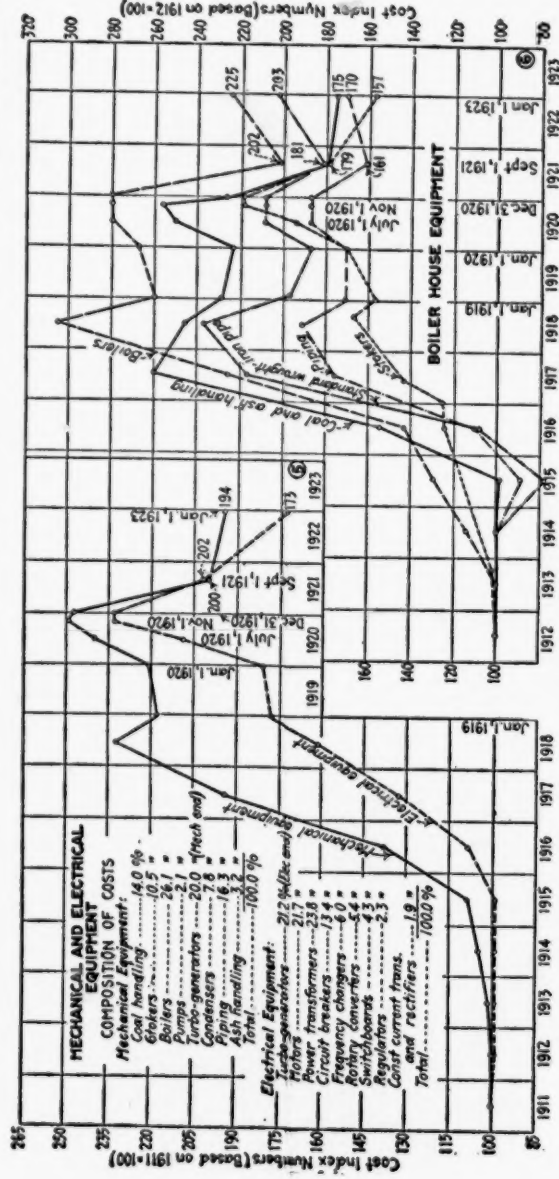


FIG. 5—ELECTRICAL EQUIPMENT ONLY 73 PER CENT ABOVE PRE-WAR LEVEL. FIG. 6—STOKER PRICES MORE REDUCED THAN BOILER

were separated into the elements making up the cost, comprising cost of concrete in place, brick delivered, steel delivered, other materials and field labor and overhead costs. The percentage of each of these elements to the total costs was determined, together with the percentage of fluctuations in unit costs of each of these elements over the period from 1911 to 1922 inclusive. Weighted percentage fluctuations in the costs of these elements were then figured, the total of the weighted percentages plus a base figure of 100 giving the cost-index numbers of the two types of construction over the period, and from these the index curves as shown on Chart 1 were prepared.

Supporting the analyses from which Chart 1 was made, detailed analyses of the unit costs of reinforced concrete and the various elements entering into it were compiled and the percentage fluctuations in the unit costs of these elements from 1911 to 1922 inclusive determined, the same analyses being made of the costs of brick, structural steel, miscellaneous building material and the various kinds of field labor entering into building construction. The cost-index curves prepared from these analyses are shown on Charts 2, 3 and 4.

Mechanical Equipment.—An analysis of mechanical equipment as a whole entering into the total cost of power stations was prepared in a manner similar to the analysis made of building costs, the relative cost of each element, such as boilers, turbo-generators (mechanical end), piping, coal and ash handling, stokers and auxiliaries, condensers and tubes and pumps, and the percentage of each of these to the total cost, determined, together with the actual and weighted percentage fluctuations in the unit costs of these same elements from 1911 to 1922 inclusive, the total of the weighted percentages giving the fluctuations in the costs of mechanical equipment as a whole over the period, from which the



APRIL 14, 1923

ELECTRICAL WORLD

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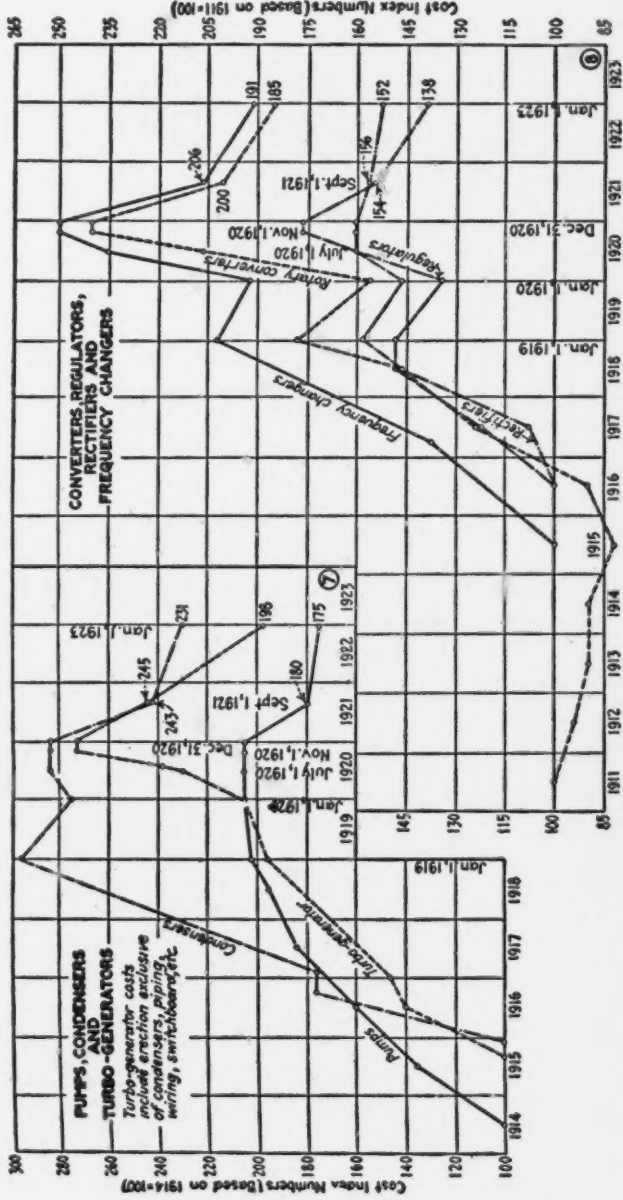


FIG. 7.—TURBO-GENERATORS 72 POINTS BELOW PEAK PRICE; CONDENSERS 131 POINTS ABOVE 1914 PRICES. FIG. 8.—FREQUENCY CHANGERS STILL 91 PER CENT ABOVE PRE-WAR LEVEL; RECTIFIERS ONLY 38 PER CENT ABOVE

index-cost curve shown on Chart 5 was prepared, the cost index curves for boilers and the other elements of mechanical equipment being illustrated in the curves of Charts 6 and 7.

Electrical Equipment.—A similar analysis to that made for mechanical equipment was made for electrical equipment entering into the total cost of generating stations and substations, relative cost determined of each element such as turbo-generators (electrical end), motors, power transformers, oil switches, frequency changers, rotary converters, switchboards, induction regulators and constant-current transformers and rectifiers, and the percentage of each of these to the total cost, together with the actual and weighted percentage fluctuations in these same elements from 1911 to 1922 inclusive, the total of the weighted percentages giving the fluctuations in the cost of electrical equipment as a whole over the period, from which the index cost curve shown on Chart 5 was prepared, the cost-index curves

for frequency changers, and the other elements of electrical equipment being shown in the curves plotted in Charts 8 and 9.

Poles and Fixtures.—Cost analyses of poles and fixtures were made similarly to the analyses of buildings and mechanical and electrical equipment. The relative costs of chestnut poles, cross-arms, braces and racks, guys, miscellaneous material, labor, hauling and overhead costs, and the percentage of these to the total cost, were determined, together with the actual and weighted percentage fluctuations in the costs of these same elements from 1911 to 1922 inclusive, the total of the weighted percentages giving the fluctuations in the cost of poles and fixtures as a whole over the period in question, from which the cost-index curve shown on Chart 10 was prepared, the index curves for poles, cross-arms and other elements entering into the cost of poles and fixtures being shown in the curves composing Charts 11

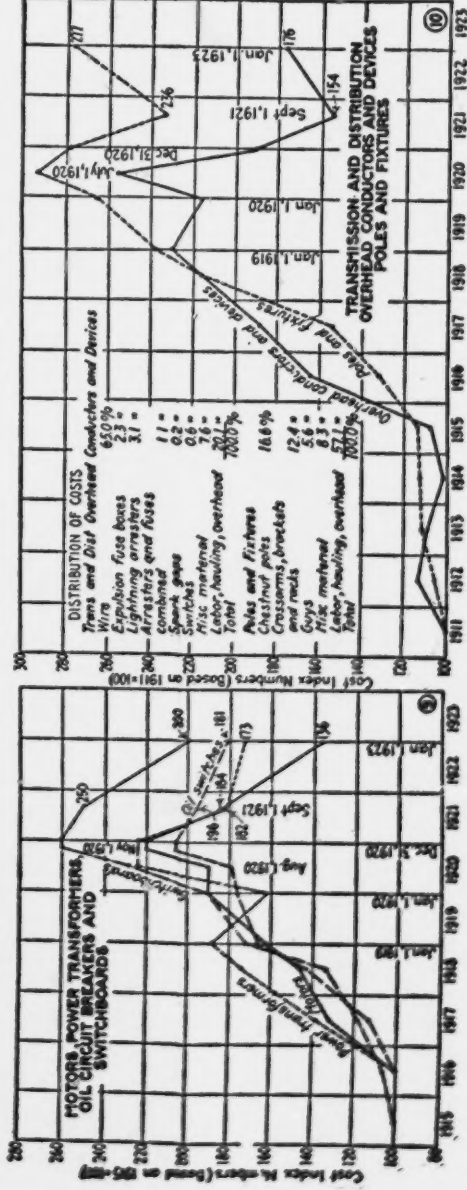


FIG. 9.—OIL SWITCHES STILL 100 PER CENT UP, BUT MOTORS SHOW GREATER REDUCTION. FIG. 10.—POLES AND FIXTURES NEAR PEAK PRICES; CONDUCTORS LOW BUT RISING



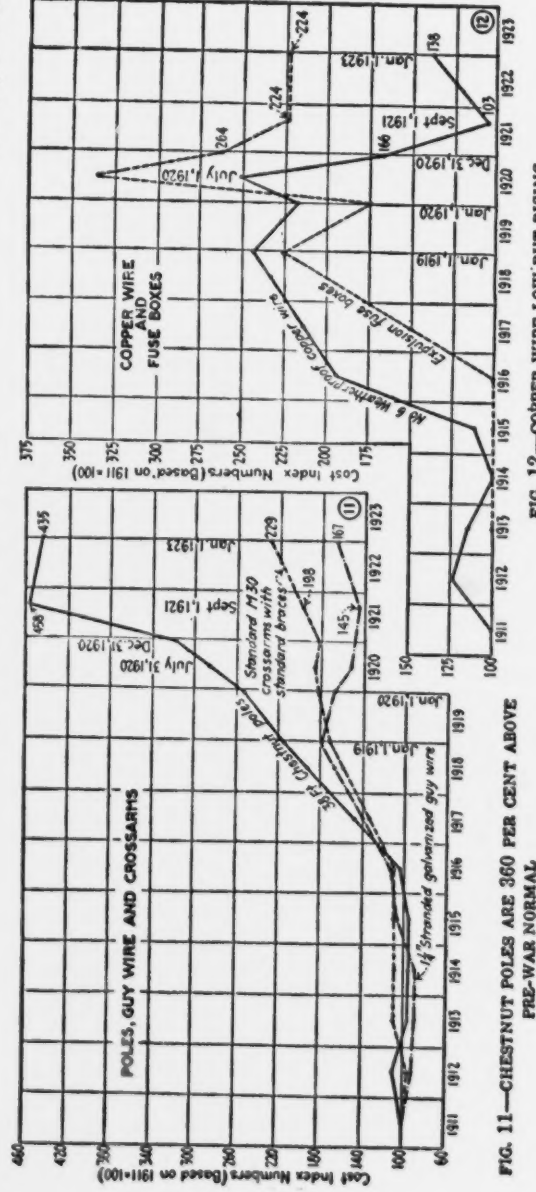
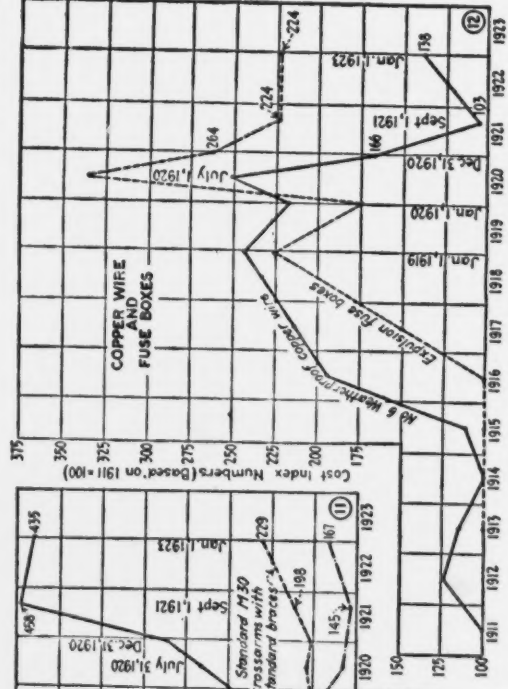


FIG. 11—CHESTNUT POLES ARE 360 PER CENT ABOVE PRE-WAR NORMAL

Other Capital Accounts or Kinds of Construction.—Similar analyses to that made of poles and fixtures were also made of overhead conductors and devices, underground conductors, municipal street lighting, customers' services, electric house meters, distribution or line transformers, arc and glow lamps and customers' electric installation, the cost-index curves for these being shown on Charts 10, 13, 14 and 15 and the cost-index curves for copper wire, underground cable and the other elements entering into the costs of the above several kinds of construction being shown on Charts 12, 13 and 16.

Total Construction and Equipment.—Finally a cost

FIG. 12—COPPER WIRE LOW BUT RISING



analysis was made of the property as a whole, including all construction and equipment, but exclusive of land, unfinished plant investment, working capital and intangibles, such as organization and development, cost of obtaining capital, etc., and the relative cost was determined of each element entering into the total, including buildings and structures, mechanical equipment, electrical equipment, poles and fixtures, overhead conductors and devices, underground conductors, line transformers, arc lamps, municipal street lighting, customers' services, customers' meters and customers' installation, the actual percentage fluctuations in each of these elements for the

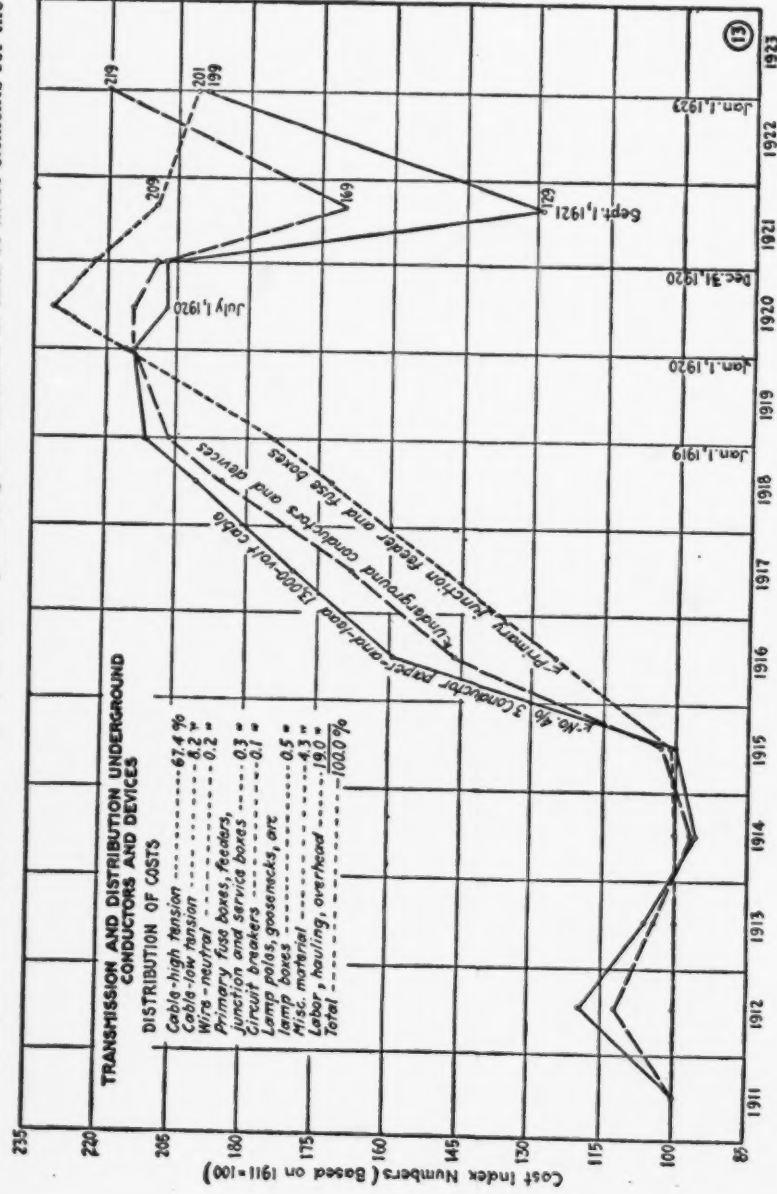


FIG. 13—UNDERGROUND EQUIPMENT NEAR PEAK PRICES AND RISING



APRIL 14, 1923

ELECTRICAL WORLD

863

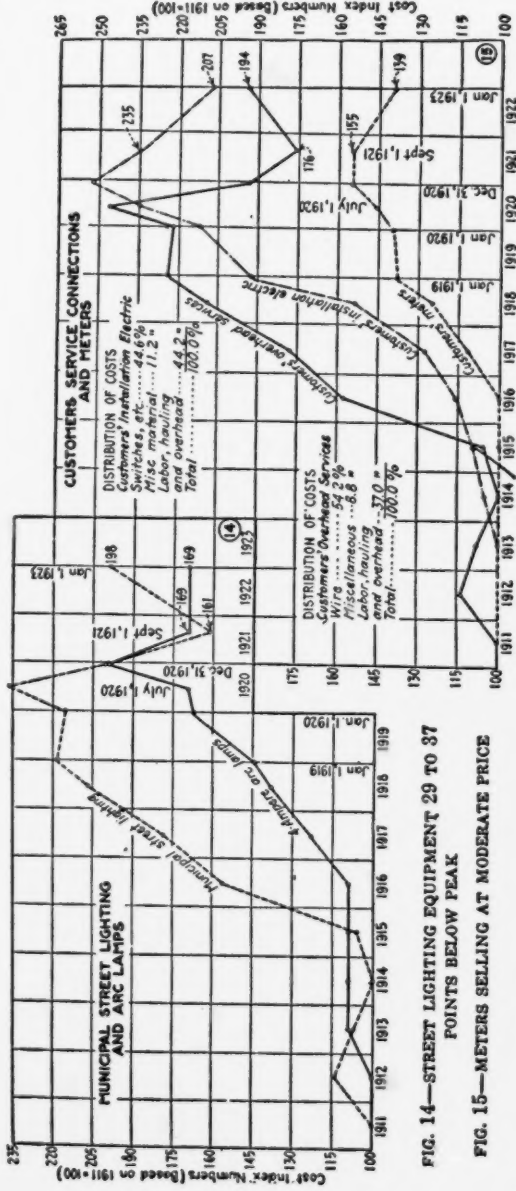


FIG. 14—STREET LIGHTING EQUIPMENT 29 TO 37 POINTS BELOW PEAK

FIG. 15—METERS SELLING AT MODERATE PRICE

period being taken from the analyses already made and the weighted percentage fluctuations being calculated therefrom, the total of the weighted percentages giving the fluctuations in the cost of construction and equipment as a whole from 1911 to 1922 inclusive, from which the cost-index curve for the entire property shown on Chart 17 was prepared. From this chart it will be noted that the cost index for a large electric light and power utility such as the one in question rose from the pre-war level in 1911 to a maximum in July, 1920, decreased from this date through the latter part of 1920 and through 1921 up to September, and from that date has been slowly rising through the past year to Jan. 1, 1923, as of which date the analyses were completed and at which time the cost index was 194, showing an increase over the pre-war period of 94 per cent.

DERIVATION OF INDEX FIGURES

For the purpose of illustrating still more effectively the method used and its application in deriving the cost-index figures from which the charts presented in this paper were derived, the table on page 864 gives the derivation of the indexes for total construction and equipment. By reference to this tabulation it will be

noted that the upper part of it gives the actual costs under each capital account covering its particular kind of construction, including buildings and structures, mechanical equipment, electrical equipment, poles and fixtures, overhead conductors and devices, underground conductors, and so on down to customers' installation, together with the percentage each of these sub-totals bears to the total of all construction and equipment.

The lower part of the tabulation gives for each capital account the percentage fluctuation in cost for its particular kind of construction from 1911 to 1922 inclusive, together with the weighted percentage fluctuations in cost for each by years, the latter being derived by multiplying its percentage of the total cost of all construction and equipment by the actual percentage fluctuations, the actual percentages having been first derived from similar tabulations giving the cost analyses of each kind of construction—such, for example, as buildings and structures, which was made up from an analysis of the unit costs and percentage fluctuations in costs for each construction element (sand, gravel, cement, brick, structural steel, lumber, etc.) and the various kinds of building labor.

Again referring to the tabulation, the sums of the weighted percentages of buildings and structures, mechanical equipment, electrical equipment, etc., for each year were taken, giving the percentage fluctuations in cost for construction and equipment as a whole over the period, from

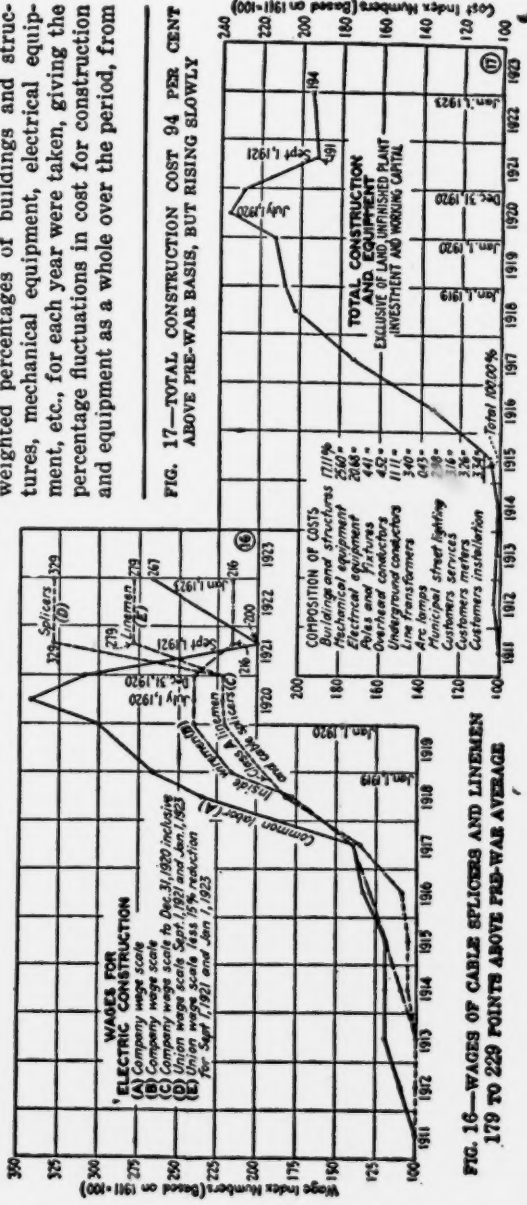


FIG. 16—WAGES OF CABLE SPlicERS AND LINEMEN 179 TO 229 POINTS ABOVE PRE-WAR AVERAGE

FIG. 17—TOTAL CONSTRUCTION COST 94 PER CENT ABOVE PRE-WAR BASIS, BUT RISING SLOWLY

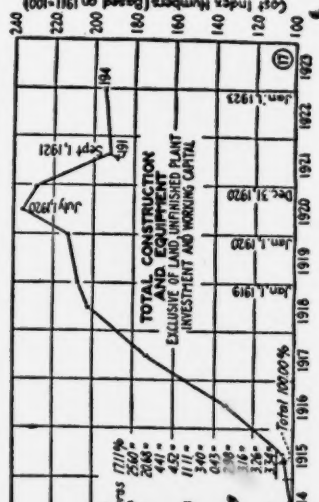




Exhibit 12

CONDENSED SUMMARY OF ANALYSES OF ACTUAL COSTS OF TOTAL CONSTRUCTION AND EQUIPMENT (ELECTRIC DIVISION)*
(Costs and Percentages of Total)

Buildings		Mechanical Equipment		Electrical Equipment		Poles and Fixtures		Overhead Conductors		Underground Conductors		Line Transformers		Are Lamps		Municipal Street Lighting		Customers' Services		Customers' Meters		Customers' Installation		Totals	
Cost	Per Cent	Cost	Per Cent	Cost	Per Cent	Cost	Per Cent	Cost	Per Cent	Cost	Per Cent	Cost	Per Cent	Cost	Per Cent	Cost	Per Cent	Cost	Per Cent	Cost	Per Cent	Cost	Per Cent	Cost	Per Cent
\$4,029,412	17.11	\$6,029,672	25.60	\$4,870,037	20.68	\$1,039,137	4.41	\$1,061,303	4.52	\$2,625,865	11.11	\$880,318	3.40	\$101,939	0.43	\$702,890	2.98	\$744,332	3.16	\$767,251	3.26	\$786,516	3.34	\$23,558,671	100.00

PERCENTAGE OF COST FLUCTUATION BASED ON STUDY OF PRICE FLUCTUATIONS IN MATERIAL AND LABOR

Date of Construction	Buildings		Mechanical Equipment		Electrical Equipment		Poles and Fixtures		Overhead Conductors		Underground Conductors		Line Transformers		Are Lamps		Municipal Street Lighting		Customers' Services		Customers' Meters		Customers' Installation		Totals		Cost Numbers
	Actual	Weighted	Actual	Weighted	Actual	Weighted	Actual	Weighted	Actual	Weighted	Actual	Weighted	Actual	Weighted	Actual	Weighted	Actual	Weighted	Actual	Weighted	Actual	Weighted	Actual	Weighted	Actual	Weighted	
1911.....	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	100
1912.....	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	103
1913.....	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	102
1914.....	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	101
1915.....	5.0	0.9	8.0	2.0	1.0	0.2	14.0	0.6	8.0	0.4	3.0	0.3	0.0	0.0	9.0	0.0	0.0	0.0	2.0	0.1	0.0	0.0	4.0	0.1	1.4	1.4	101
1916.....	50.0	8.6	38.0	9.7	10.0	2.1	32.0	1.4	64.0	2.9	47.0	5.2	0.0	0.0	9.0	0.0	55.0	1.6	36.0	1.8	0.0	0.0	9.0	0.3	4.8	4.8	105
1917.....	122.0	20.9	94.0	24.1	33.0	6.8	55.0	2.4	88.0	4.0	69.0	7.7	8.0	0.3	23.0	0.1	79.0	2.4	79.0	1.8	0.0	0.0	17.0	0.6	33.9	33.9	134
1918.....	134.0	22.9	132.0	33.8	62.0	12.8	116.0	5.1	117.0	5.3	95.0	10.6	46.0	1.6	37.0	0.2	106.0	3.2	110.0	3.5	12.0	0.4	28.0	0.9	72.5	72.5	173
Jan. 1, 1919.....	129.0	22.1	118.0	30.2	79.0	16.3	139.0	6.1	131.0	5.9	108.0	12.0	58.0	2.0	44.0	0.2	119.0	3.5	124.0	3.9	39.0	1.3	92.0	3.1	101.7	101.7	202
Jan. 1, 1920.....	140.0	24.0	121.0	31.0	81.0	16.8	165.0	7.3	119.0	5.4	115.0	12.8	46.0	1.6	67.0	0.3	117.0	3.5	123.0	3.9	40.0	1.3	112.0	3.7	106.6	106.6	207
July 1, 1920.....	175.0	29.9	140.0	35.8	109.0	22.5	194.0	8.6	137.0	7.1	116.0	12.9	60.0	2.0	69.0	0.3	137.0	4.1	147.0	4.6	46.0	1.5	133.0	4.4	133.7	133.7	212
Dec. 31, 1920.....	88.0	15.1	100.0	25.6	102.0	21.1	136.0	6.0	54.0	2.4	69.0	12.2	76.0	2.6	99.0	0.4	100.0	3.0	94.0	3.0	55.0	1.8	151.0	5.0	128.3	128.3	224
Sept. 1, 1921.....	103.0	17.6	94.0	24.1	73.0	15.1	177.0	7.8	76.0	3.4	120.0	13.3	38.0	1.3	69.0	0.3	98.0	2.9	94.0	3.0	39.0	1.3	107.0	3.6	93.7	93.7	191

* Exclusive of costs of land, unfinished plant investment and working capital.

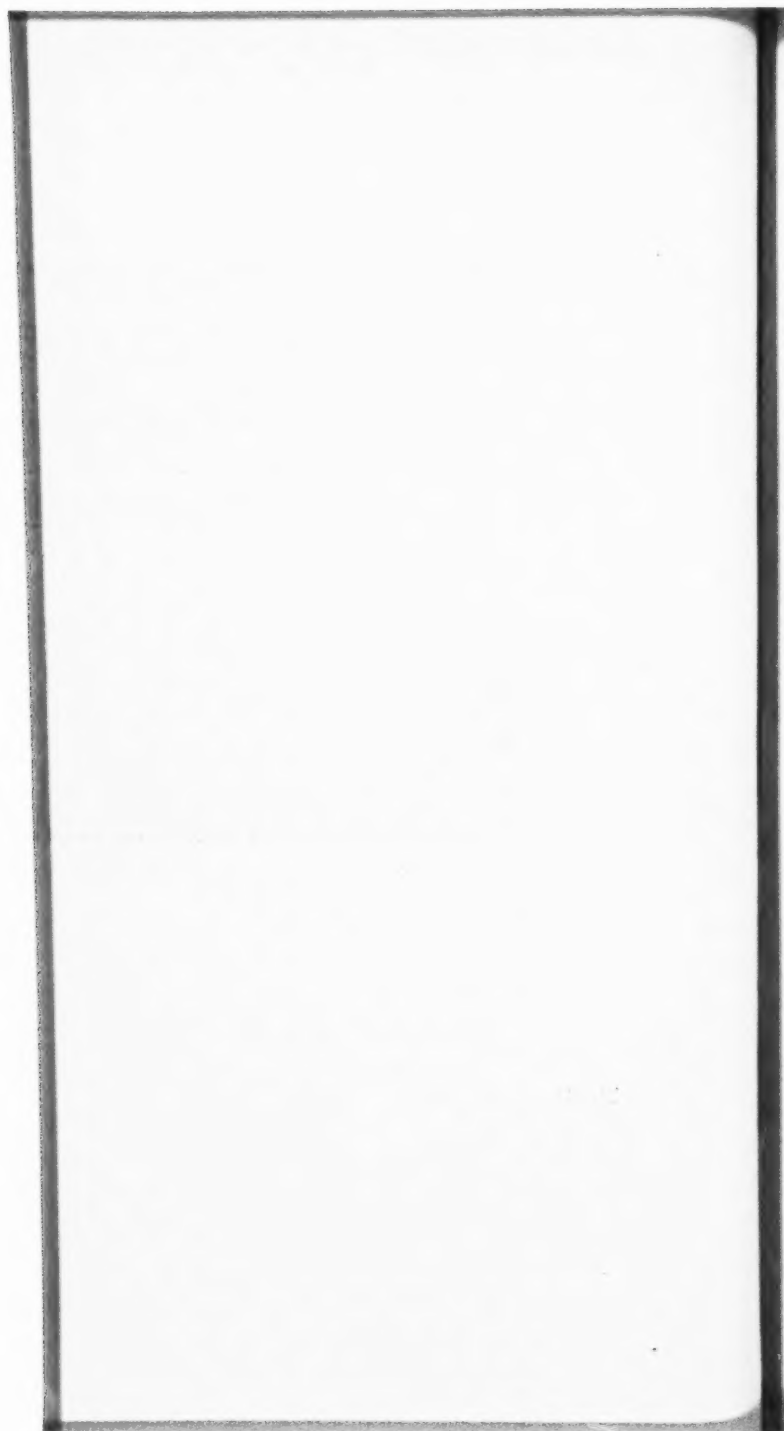


Exhibit 13

1033

BOILER COSTS

Date	Units	Total H.P.	Price	Unit Price
2/23/07	2—400	800	\$13,200	\$16.50
5/20/09	4—445	1780	25,200	14.15
2/2/12	8—600	4800	63,500	13.23
3/13/13	10—600	6000	81,183	13.55
4/19/14	4—508	2032	25,000	12.31
10/22/15	2—600	1200	15,500	12.91
10/25/16	4—600	2400	43,000	17.92
4/18/17	4—600	2400	53,400	22.25
4/24/18	4—600	2400	62,600	26.10
2/20/20	8—600	4800	154,600*	32.21

TURBINE COSTS

Rating	Contract	Date	Price	Cost Price K.V.A.	1034
Normal					
3,500 K.W. @ 100% P. F.	5/22/09		\$62,500.	\$17.85	
8,000 K.V.A.	5/ 3/12		160,000.	20.00	
20,000 K.V.A. @ 100%	1/21/15		196,910.	9.85	
47,000 K.V.A. @ 95% P. F.	1/28/16		376,000.	8.00	
47,000 K.V.A.	7/31/20		910,000.	19.36	

1035

1036

Request for Findings

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION.

PUBLIC UTILITIES COMMISSION
on its own motion

vs.

NARRAGANSETT ELECTRIC LIGHTING
COMPANY.

1037

REQUEST FOR FINDINGS

SUBMITTED BY NARRAGANSETT ELECTRIC LIGHTING
COMPANY.

Narragansett Electric Lighting Company requests the Commission to make the following findings:

1038

1. That the rates contained in Schedule R. I. P. U. C. No. 68 are unjust, unreasonable, insufficient and unjustly discriminatory and preferential and otherwise in violation of the provisions of the Public Utilities Act in that the said rates, tolls and charges yield no return on the value of the property used for service to the Attleboro Company, and the rates, tolls and charges charged by the Narragansett Company to its other customers yield a fair return on the value of the property used for such service.

2. That the rates contained in Schedule R. I. P. U. C. No. 125 are just, reasonable, sufficient and not unjustly discriminatory or preferential or otherwise in violation of any of the provisions of the Public Utilities Act for the reason that such rates, tolls and charges yield a fair return and no more than a fair return on the value of the property used for such service.

3. That the rates set forth in Schedule R. I. P. U. C. No. 68 are detrimental to the public welfare.

4. That, upon the evidence before this Commission, the aggregate loss to the Narragansett Company from serving the Attleboro Company for the term of the contract under the contract rate, after a return of 8% on the investment devoted to such service, will be not less than \$1,500,000.00. 1040

5. That continuation of service by the Narragansett Company under Schedule R. I. P. U. C. No. 68 during the term of the contract will result in an increasing operating loss to the Narragansett Company without any return whatever on the investment devoted to such service.

6. That, upon the evidence before this Commission, the loss to the Narragansett Company from supplying electricity to the Attleboro Company under Schedule R. I. P. U. C. No. 68, including a return of 8% on that part of its investment used in rendering such service, has been for the years 1918 and 1923 inclusive, as follows: 1041

1012

Request for Findings

(9 months) 1918..	\$29,479.12	1921..	\$53,852.48
1919..	48,735.60	1922..	61,348.07
1920..	41,394.39	1923..	45,611.33

7. That the service furnished by the Narragansett Company to the Attleboro Company under Schedule R. I. P. U. C. No. 68 during the year of 1923 was rendered at an operating loss to the Narragansett Company of not less than \$4,326.03, without any return whatever on the investment devoted to such service.

1043

8. That upon the evidence before this Commission the service furnished and to be furnished by the Narragansett Company to the Attleboro Company during the year of 1924, if rendered under Schedule R. I. P. U. C. No. 68, will result in an operating loss of not less than \$6,000.00 to the Narragansett Company, without taking into account any return whatever on the investment devoted to such service.

1044

9. That the generating and delivery cost of kilowatt hours delivered to the Attleboro Company by the Narragansett Company in 1923 was .0079386 and such cost for 1924 will be no less and that the annual cost per kilowatt of demand of carrying that part of the generating plant, properly allocable to the service furnished the Attleboro Company in 1924 was \$12.37 and for that part of the investment in transformers, cables, sub-stations so allocable was \$2.73 and for the aerial transmission line devoted to such service was \$2.61, making a total cost per kilowatt of demand of \$17.71; that adjusted to the 12½% Federal Income Tax to ascertain the net return, the amount must be raised to

Request for Findings

1045

\$19.21; and that upon these facts found by this Commission, the service charge of \$19 set forth in Schedule R. I. P. U. C. No. 125 is reasonable.

10. That, considering all the evidence submitted, service by the Narragansett Company under Schedule R. I. P. U. C. No. 125 will yield to the Narragansett Company approximately 8% on the investment devoted by the Narragansett Company to the furnishing of such service.

11. That a return of approximately 8% on the value of the investment devoted to the furnishing of service is a reasonable return.

1046

12. In determining the value of the whole or any part of the investment or property of the Narragansett Company for the purpose of these findings the Commission has considered all relevant facts, including original cost, reproduction cost, money honestly and prudently invested, the par value of securities outstanding, the market value of securities outstanding, the sum required to meet operating expenses, and other facts which are relevant, all of which facts this Commission has, after investigation and hearing and considering all the evidence and the arguments of counsel, carefully considered and to each of which it has given due weight.

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Respectfully submitted,

ROPES, GRAY, BOYDEN AND PERKINS,
HINCKLEY, ALLEN, TILLINGHAST AND PHILLIPS,
Attorneys for Narragansett Electric
Lighting Company.

1048

Motion of Attleboro S. & E. Co.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION

PUBLIC UTILITIES COMMISSION,
on its own motion

v.

NARRAGANSETT ELECTRIC LIGHTING
COMPANY

1049

Motion submitted in behalf of

ATTLEBORO STEAM & ELECTRIC COMPANY

As was stated at the beginning of the hearings the Attleboro Steam & Electric Company contends, both as a matter of constitutional law and as a matter of statutory construction, that the contract of 1917 cannot be abrogated. It does not waive this contention but, understanding that the Commission has already ruled against it on these points it does not further argue them now.

1050

Assuming that under proper circumstances the contract of 1917 may be abrogated the fundamental contention of the Attleboro Company is that it cannot be abrogated merely because it is unprofitable or does not yield an 8 per cent. profit but only if the carrying out of the contract would impair the ability of the Narragansett Company to serve the rest of its customers properly and at reasonable rates.

“Before a contract can be interfered with by the police power, it must appear that the

Motion of Attleboro S. & E. Co.

1051

contract does in some measure affect adversely the welfare of the public. * * *

"If, for instance, continued performance of the contracts in question should bear so heavily on the power company that its general revenues would be depleted to the extent that a recoupment would have to be made at the expense of the other customers, or would otherwise be reflected in its rates on services, to that portion of the public served by the power company, the contracts could and should be abrogated under the police power; but if continued performance of the contracts would only affect the net profits or dividends on that portion of the power company's property devoted to performance of the contracts, then the public interest would not be affected, and there would be no occasion or excuse for the intrusion of the state's police power."

1052

Wichita Railway and Light Company v. Court of Industrial Relations, 214 Pac. Rep. 797; P. U. R. 1923 D 593.

Judge Brown recognizes and adopts this principle. He quotes the opinion of the Supreme Court of the United States in *Arkansas Gas Company v. Railroad Commission*, 261 U. S. 379, where the court said among other things:

"While a state may exercise its legislative power to regulate public utilities and fix rates, notwithstanding the effect may be to notify or abrogate private contracts * * * there is, quite clearly, no principle which imposes an obligation to do so merely to relieve a contracting party from the burdens of an improvident undertaking. The power to fix rates when exerted, is for the public welfare to which private contracts must yield; but it is not an independent legislative function to vary or set

1053

1054

Motion of Attleboro S. & E. Co.

aside such contracts however unwise and unprofitable they may be."

Judge Brown goes on to say:

"The finding that the contract was unprofitable and therefore discriminatory * * * is a non-sequitur." * * *

"Before the contract can be interfered with under the police power it must appear that the contract does in some manner affect adversely the welfare of the public.

1055

"There is nothing in the records to show that the defendant brought to the notice of the Commission any evidence that the company would be unable to perform its full duty in the community whose interest it is the function of the Commission to protect." * * *

"Even if the Commission has received an ex parte statement that a single contract was for the time being unprofitable, this was far from establishing the fact that the public interest had been injuriously affected."

Attleboro Steam & Electric Company v. Narragansett Electric Lighting Company, 295 Fed. 895, 901, 902.

1056

There is no evidence whatever before the Commission that the continuance of the contract will render the Narragansett Company "unable to perform its full duty to the community". The earnings of the Company are annually producing a large surplus over and above the 8 per cent. dividend and it is conceded that the continuance of the contract would not endanger the payment of the dividends in the future (testimony, p. 67). Thus, even the rights of the stockholders, if they are of any consequence

in this connection, are not affected. So far as the public is concerned, there is no evidence whatever that the present rates charged to any class of customers are in any way unreasonable or ought in justice to be reduced. The only testimony is to the effect that the present rates are reasonable (p. 66) and that there never has been a complaint concerning them (p. 70).

The Narragansett Company seeks to obtain \$50,000 a year more from the Attleboro Company and says that if it receives this added sum it will be enabled to make a slight reduction in the price charged its customers for residence lighting. There are 50,000 such customers (p. 63). The rates now charged them are reasonable. Certainly there is no public interest requiring the abrogation of the Attleboro contract for the sake of reducing the rates charged these other customers by an average amount of \$1.00 a year per customer.

1058

It may be noted that the Narragansett Company's rates have already been reduced, while this contract has been in effect, by an amount which was estimated to save the public \$140,000 during the first year (pp. 64-65).

Mr. Graustein, in his opinion, asserted that the question before the commission is whether the old rate is a fair rate and if not whether the new rate can be substituted (p. 11). If it be contended that the contract rate is necessarily unfair, if it can be shown that for the time being it is unprofitable or at least does not yield the full 8 per cent, it is submitted that Mr. Graustein's statement of the question is wholly inaccurate and totally inconsistent with the authorities above referred to.

1059

1060

Motion of Attleboro S. & E. Co.

The Chairman of the Commission, during the course of the hearings, stated the rule accurately:

"It is then the duty of the Company to bear its burden up to the point where they affect any equity to the general public" (pp. 72-73).

1061

The Attleboro Company submits no formal requests for rulings of law as its contentions with respect to the law have been sufficiently indicated. It submits the annexed requests for findings of fact from which it appears among other things that the Attleboro Company maintains that even if the contract could be abrogated, the proposed new rate could not be allowed because it is computed on an unfair and improper basis.

(Sgd.) R. G. DODGE,
Counsel for Attleboro Steam &
Electric Company.

1062

Requests for Findings of Fact

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Requests for Findings of Fact submitted by

ATTLEBORO STEAM & ELECTRIC COMPANY

1. The contract of 1917 was entered into by the parties at the solicitation of the Narragansett Company which expressly stated that it expected to receive from it during the earlier years of the contract a profit less than that expected to be yielded by the Company's service generally (See Ex. 1; Testimony, p. 85).

2. At the time when the contract in question was entered into, the Attleboro Company was producing at its own plant all the electricity which it needed. After the contract was made and in reliance on it the Attleboro Company dismantled its generating plant and is no longer in a position to produce its own current (p. 85).

1064

3. The contract was made at the time when the cost of electrical equipment had already greatly increased as compared with its cost before the war and there was the strongest reason for apprehending that it would increase still further (See Exs. 11, 12, 13).

4. Rate 68, being that set forth in the contract of 1917, was approved by the Commission as a special rate to the Attleboro Company for 20 years, with the full expectation, as stated by the officers of the Narragansett Company, that it would not yield the full profit during the earlier years of the contract period.

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1066

Requests for Findings of Fact

5. So far as appears, none of the rates charged by the Narragansett Company to customers other than the Attleboro Company are unreasonably high; nor has there been any complaint as to such rates.

6. So far as appears, the service rendered by the Narragansett Company to its customers generally is adequate and satisfactory in all respects.

1067

7. It does not appear that the existence of a contract with the Attleboro Company has in any way prevented the Narragansett Company from rendering any and all service called for by other customers or in any respect embarrassed it in meeting the reasonable requirements of the public.

8. The continuance of the contract will not endanger the continued payment of 8 per cent. dividends annually to the stockholders of the Narragansett Company.

1068

9. Since the contract of 1917 was negotiated the gross and net earnings of the Narragansett Company have rapidly increased. The gross earnings in 1917 were \$2,566,000 and in 1923 \$6,600,000. The surplus after the payment of dividends in 1923 amounted to \$293,392.94 and for the three months ending March 31, 1924 surplus was \$248,969.02, these being the last figures available at the time of the hearings (pp. 67, 91).

10. The Narragansett Company seeks by its proposed new rate which is aimed solely at the Attleboro Company (see statement of Chairman p. 1;

testimony of Gray, pp. 57-58, 60), to obtain from the Attleboro Company some \$50,000 a year additional income, yet its officials admitted in effect that if it were receiving about \$23,700 a year more they would not have instituted these proceedings. This admission was made by Mr. Gray, the company's rate expert, who concedes that if the unit cost of the generating plant had remained at \$45 the Company would not have complained of the contract rate (pp. 120, 121); yet it appears that of the increased rate now asked for only about \$23,700 is due to the increase of unit cost of the generating plant from \$45 to \$89.15.

1070

11. It is only by an unfair method of figuring that the contract of 1917 can be shown to have resulted in an actual loss to the Narragansett Company or to have done more than merely reduce somewhat the 8 per cent. profit on the part of the plant devoted to the performance of the Attleboro contract. The Company's method of figuring is unfair in the following respects:

(a) It apportions "generating plant costs" among its customers according to the maximum primary demand. Although a great deal of secondary current is disposed of at a profit (p. 38) this is totally disregarded. The result is very unfair to a customer which like the Attleboro Company takes only primary current. Thus in 1923 the Attleboro Company, taking about 1/35 of the total output of the Narragansett Company (p. 49), is chargeable, according to the Narragansett Company's new method of figuring, with 3600/55000 or about 1/15 of the capital costs, while the New Eng-

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1072

Requests for Findings of Fact

land Power Company, which takes one-half of the total output (p. 52) and thus takes seventeen and one-half times as much current as the Attleboro Company is charged with only a rate of four times as much of the generating plant capital costs.

(b) The peak primary load of the Narragansett Company is taken at too low a figure. It was always taken at 60,000 in sending bills under rate 101 (p. 133; See also Ex. 9).

1073

(c) An unwarranted attempt is made by the Narragansett Company to recoup the loss which it incurred in building the transmission line in Massachusetts (pp. 137, 156).

(d) In apportioning the overhead (Ex. 1, last page), no consideration whatever is given to the fact that the Attleboro Company is a single wholesale customer (p. 46).

(e) Sundry interest charges are included which are unfair (see pp. 134, 164).

1074

If only a small fraction of the unfairness could be eliminated from this figuring it would be obvious that the Narragansett Company is not suffering an out-of-pocket loss from this contract but is merely failing to reach the full 8 per cent. of profit on it (see p. 48; pp. 107-8).

(Stamped)

Received July 10, 1924

Public Utilities Commission

State of Rhode Island

Brief of Narragansett Electric Lighting Co.

1075

STATE OF RHODE ISLAND AND PROVIDENCE
PLANTATIONS PUBLIC UTILITIES
COMMISSION

PUBLIC UTILITIES COMMISSION
on its own motion

vs.

NARRAGANSETT ELECTRIC LIGHTING
COMPANY

BRIEF OF NARRAGANSETT ELECTRIC
LIGHTING COMPANY

1076

STATEMENT OF CASE.

The Narragansett Electric Lighting Company, on the seventh day of May, 1924, filed with the Commission a rate schedule, R. I. P. U. C. No. 125, cancelling R. I. P. U. C. No. 68 and No. 101, to be effective on all electricity delivered after midnight, on June 14, 1924. The Commission on its own motion ordered that an investigation be made and that a public hearing be held on Monday, May 26, 1924, upon the question of whether the existing rates, tolls and charges charged by the Narragansett Electric Lighting Company to the Attleboro Steam and Electric Company, or those proposed to be charged to said Company, and other electric lighting companies under the said rate schedule R. I. P. U. C. No. 125 were unjust, unreasonable, insufficient or unjustly discriminatory, or preferen-

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tial or otherwise in violation of any of the provisions of the Public Utilities Act of the State of Rhode Island, and otherwise upon the question as to the propriety of the proposed change or changes embodied in said schedule No. 125. The Commission ordered that notice of such investigation and of such hearing should be given by mail to the Attleboro Company and the Narragansett Company and by publication on May 16 and May 23, 1924, in the Providence Journal. Notice was accordingly duly given. With the assent of counsel, the hearing was continued until Monday, June 2, 1924, on which day a formal public hearing was held before the Commission and evidence was taken. The hearing was continued on Monday, June 16, 1924, and further evidence was submitted and arguments of counsel were heard.

1079 Schedule R. I. P. U. C. No. 68 was duly filed on May 16, 1917, and then approved by the Commission under the provisions of Section 42 (b) of the Public Utilities Act. The rate set forth in this schedule was the rate set forth in the contract dated May 8, 1917 by and between the Attleboro Company and the Narragansett Company whereby the Narragansett Company agreed to furnish the Attleboro Company with electric energy for a period of twenty (20) years at the rates specified therein.

1080 The Narragansett Company contends that the present rate is unjust, unreasonable, insufficient and unjustly discriminatory and otherwise in violation of the provisions of the Public Utilities Act and the rate set forth in Schedule R. I. P. U. C. No. 125 is just, reasonable and not unjustly discriminatory.

Brief of Narragansett Electric Lighting Co. 1081

The Attleboro Company admits that the Narragansett Company is not receiving for the service rendered to the Attleboro Company a fair return on the investment used for that service but contends that no change should be made in the contract rate if the Narragansett Company is earning a sufficient amount of money from the service rendered to all customers to provide a reasonable return on its entire investment, and that neither the General Assembly nor the Commission has power to change the contract rate under the circumstances. The Narragansett Company contends that upon the uncontradicted evidence before the Commission, the public welfare is adversely affected (1) because service is being rendered by the Narragansett Company to the Attleboro Company at less than the actual operating cost thereof (2) because the Narragansett Company is receiving no return on the investment used in such service (3) because the Narragansett Company is not receiving a substantial return on the investment used in such service (4) because the Narragansett Company is not receiving a reasonable return on the investment used in such service and (5) because the contract rate is unjustly discriminatory and unreasonable. 1082

I.

All contracts made by utilities respecting rates are subject to regulation by the state in the exercise of its police power and all such contracts therefore are made in contemplation of such regulation. 1083

The leading case on the power of the state to alter contract rates is Union Dry Goods Company

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v. Georgia Public Service Corporation, 248 U. S. 372 (1919) where the court said:

“That private contract rights must yield to the public welfare, where the latter is appropriately declared and defined and the two conflict, has been often decided by this court. (The court then quoted from a number of cases.) These decisions, a few from many to like effect, should suffice to satisfy the most skeptical or belated investigator that the right of private contract must yield to the exigencies of the public welfare when determined in an appropriate manner by the authority of the state.”

1085

In *Producers Transportation Company v. R. R. Comm.*, 251 U. S. 228, 232 (1920), the court said:

“A common carrier cannot by making contracts for future transportation or by mortgaging its property or pledging its income prevent or postpone the exertion by the State of the power to regulate the carrier’s rates and practices. Nor does the contract clause of the Constitution interpose any obstacle to the exertion of that power.”

1086 In *Hudson County Water Co. v. McCarter*, 209 U. S. 349, 357, the court said:

“One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them. The contract will carry with it the infirmity of the subject matter.”

Brief of Narragansett Electric Lighting Co. 1087

In *McCook Irrigation & W. P. Co. v. Burtless*, 98 Neb. 141, 152 N. W. 334, P. U. R. 1915C 587, the court said:

"Any contracts entered into between the irrigation company and consumers under the ditch, with reference to the annual rates which should be charged for the use of water, were entered into with the law forming a part of the contract, and were subject to legislative control" (cases cited).

In *Minneapolis, St. Paul and Sault Ste. Marie R. Co. v. Menasha W. W. Co.*, 159 Wis. 130, 150 N. W. 411 (1914) the court said: 1088

"The power to regulate the rates of common carriers is a sovereign power of the state * * * And every contract made as to such rates with a corporation authorized to contract in reference thereto is made with the knowledge of and subject to the right of the state at any time to resume the exercise of such sovereign power. The legislative right to supersede it is as clear as though it were written into the contract itself, for the law implies it."

In *Raymond Lumber Co. v. Raymond Light & Water Co.*, 92 Wash. 330, 159 Pac. 133, P. U. R. 1916F 437, the court said: 1089

"The rule is that contracts upon subjects which are within the police power, even though valid when made, must be taken to have been

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entered into in view of the continuing power of the state to control the rates to be charged by public service corporations (Cases cited). * * * The reason for this rule is, that if contracts valid when made, covering a subject neither within the police power, are not subject to the subsequent exercise of that power on the part of the state, it would place in the hands of individuals the power to withdraw from the state the right to subsequently exercise its police power."

In *Law v. R. R. Comm.*, 184 Cal. 737, 195 Pac. 1091 423, P. U. R. 1921C 156 (Cal. 1921) the court said:

"If the service contracted for was devoted to public use * * * the contract for the service was subject to the exercise of the police power and, the state having elected upon the commission the power to prescribe uniform rates for the service, petitioner cannot complain if the exercise of this power results in the practical annulment of his private contract fixing compensation for a public service."

Many other cases to like effect might be cited. Collections will be found in notes in 9 A. L. R. 1423 and 3 A. L. R. 730, 738.

1092 If the rule were otherwise than as indicated in the above cases, it is clear that a public utility could make contracts with favored customers which might be grossly preferential and the whole purpose of the Public Utility Act would thereby be defeated.

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II.

While the exercise of the police power must always be predicated upon the public welfare, it is primarily a legislative function to define the public welfare, and the legislature has already done this in requiring all rates to be reasonable and not unjustly discriminatory.

It is well settled that it is primarily for the legislature to define the public interest. The legislature has a wide discretion in determining what is for the public welfare, and its decision will not be overthrown unless it clearly appears that the legislature was unjustified in its conclusion. 1094

Barbier v. Connolly, 113 U. S. 27 (1885)

Mugler v. Kansas, 123 U. S. 623 (1887)

Middleton v. Texas Power & Light Co.,
249 U. S. 152 (1919)

Dominion Hotel v. Arizona, 249 U. S. 265
(1919)

In defining acts and practices which are detrimental to the public welfare, the legislature of Rhode Island has declared in Sec. 38 of the Public Utilities Act (Gen. Laws, 1923, C.253) :

"The rate, toll or charge * * * made, exacted, demanded, or collected by any public utility * * * for any heat, light, water or power produced, transmitted, delivered or furnished * * * or for any service rendered or to be rendered in connection therewith, shall be reasonable and just, and every unjust or unreasonable 1095

1096 *Brief of Narragansett Electric Lighting Co.*

charge for such service is prohibited and declared unlawful."

The legislature has also declared, in Sec. 40 of the Public Utilities Act:

"If any public utility shall make or give any undue or unreasonable preference or advantage to any particular person, firm or corporation, or shall subject any particular person, firm or corporation to any undue or unreasonable privileges or disadvantage in any respect whatsoever, such public utility shall be deemed guilty of a misdemeanor * * * ."

1097

In Sec. 39 of the Act unjust discrimination is declared to be unlawful and in Sec. 41 rebates, concessions and discriminations are condemned.

The Narragansett Company having shown that the present rate is unreasonable and unjustly discriminatory has ipso facto established that the public welfare as defined by the legislature will be injuriously affected by a continuance of said rate.

The rate fixed by contract with the Attleboro Company, if found to be unreasonable or unjustly discriminatory within the test laid down by the Supreme Court of the United States, is not saved from the condemnation of the sections cited because it was originally approved by the Commission under Section 42 (b). This section reads as follows:

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"With the approval of the commission any public utility may give free transportation or service, upon such conditions as such public utility may impose, or grant special rates

Brief of Narragansett Electric Lighting Co.

1099

therefor to the state, to any town or city, or to any water or fire district, and to the officers thereof, for public purposes, and also to any special class or classes of persons, not otherwise referred to in this section, in cases where the same shall seem to the commission just and reasonable, or required in the interests of the public, and not unjustly discriminatory."

Obviously, it was not intended that by approval of a rate under this section the State should be deemed to have surrendered its power to regulate rates where changed conditions have caused rates approved by the Commission to become unreasonable or unjustly discriminatory. It is a firmly established doctrine of the Supreme Court of the United States that strong and explicit language must be used by the State, expressly depriving itself of its rights to act under the police power, before the State will be deemed to have bargained away its right to legislate for the welfare of its citizens.

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*Milwaukee Electric Ry. v. Wisconsin R.
R. Comm., 238 U. S. 174, 180 (1915)*

"Suit to enjoin the commission from enforcing an order reducing fares below those fixed by a city ordinance, on the ground that the ordinance constituted an irrevocable contract by the city."

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At p. 180, the court said:

"The fixing of rates which may be charged by public service corporations, of the charac-

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Brief of Narragansett Electric Lighting Co.

ter here involved, is a legislative function of the State, and while the right to make contracts which shall prevent the State during a given period from exercising this important power has been recognized and approved by judicial decisions, it has been uniformly held in this court that the renunciation of a sovereign right of this character must be evidenced by terms so clear and unequivocal as to permit of no doubt as to their proper construction. This proposition has been so frequently declared by decisions of this court as to render unnecessary any reference to the many cases in which the doctrine has been affirmed. The principle involved was well stated by Mr. Justice Moody in *Home Telephone Co. v. Los Angeles*, 211 U. S. 265, 273:

1103

“The surrender, by contract, of a power of government, though in certain well-defined cases it may be made by legislative authority, is a very grave act, and the surrender itself, as well as the authority to make it, must be closely scrutinized. No other body than the supreme legislature (in this case, the legislature of the State) has the authority to make such a surrender, unless the authority is clearly delegated to it by the supreme legislature. The general powers of a municipality, or of any other political subdivision of the State are not sufficient. Specific authority for that purpose is required.’”

1104

And in *Atlantic Coast Line R. R. Co. v. Goldsboro*, 232 U. S. 548, 558, the court said:

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"It is settled that neither the 'contract clause' nor the 'due process' clause has the effect of overriding the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and property rights are held subject to its fair exercise."

III.

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The earnings of a utility from other customers do not justify a noncompensatory or inadequate return from one customer.

In *P. U. Commission v. Wichita Railroad & Light Co.*, 268 Fed. 37 (8th Circuit, 1920) the court had before it a situation similar to ours. The Utility had filed a petition to raise certain contract rates charged to large customers and the petition, although alleging that the contracts did not return a proper profit upon the property devoted to that service, did not allege that the contract rates would cause the Utility to become insolvent or would prevent it from discharging its duty to the public. It was claimed that the Utilities Commission could not raise such contract rates in the absence of such an averment in petition. The Circuit Court of Appeal for the 8th circuit held that the petition was sufficient, saying:

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"The failure of the Gas & Electric Company to state in its petition that the rates then in

1108 *Brief of Narragansett Electric Lighting Co.*

force would cause it to become insolvent, or would prevent it from discharging its duty to the public, did not deprive it of the right to ask for compensatory rates from the large consumers, if the rates charged these consumers are noncompensatory, even if, when added to the rates charged the smaller consumers, the net income is sufficient to prevent the company from becoming insolvent, or enable it to discharge its duty to the public. In *Northern Pacific Ry. v. North Dakota*, 236 U. S. 585, 594, 596, 597; 35 Sup. Ct. 429, 432, 433 (59 L. Ed. 735, L. R. A. 1917F, 1148, Ann. Cas. 1916A. 1), the Supreme Court of North Dakota had held:

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“‘In order to establish such a noncompensatory rate to be confiscatory (referring to rate on one article, lignite coal), it must further appear that any deficit under the rate affects the net intrastate freight earnings materially and reduces them to a point where they are insufficient to amount to a reasonable rate of profit in the amount of the value of the railroad property within the state contributing to produce such net earnings.’

“This the Supreme Court of the United States held to be erroneous. The court said:

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“‘The state cannot estimate the cost of carrying coal by throwing the expense incident to the maintenance of the roadbed, and the general expenses, upon the carriage of wheat, or the cost of carrying wheat by throwing the burden of the upkeep of the property upon coal and other commodities. * * * The outlays that ex-

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clusively pertain to a given class of traffic must be assigned to that class and the other expenses must be fairly apportioned.'

"The same principle was announced in *Norfolk & Western Ry. v. Conley*, 236 U. S. 605, 35 Sup. Ct. 437, 59 L. Ed. 745. In that case the act involved was a passenger rate on railroads. The Supreme Court of West Virginia had followed the rule adopted by the Supreme Court of North Dakota in the *Northern Pacific R.R.* case. The Supreme Court, reversing the decree, held:

"The state may not select either of these departments (freight or passenger) for arbitrary control. Thus it would not be contended that the state might require passengers to be carried for nothing, or that it could justify such action by placing upon the shippers of goods the burden of excessive charges in order to supply an adequate return for the carrier's entire service.'"

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Upon appeal to the Supreme Court of the United States (260 U. S. 48, 1922) the decision of the Circuit Court of Appeals was reversed upon the ground that, motion for judgment having been overruled by the Circuit Court of Appeals, the complainant should have been offered an opportunity to traverse the allegations of fact by the Utility as to the reasonableness of the rates, the complainant having reserved this right. The remainder of the opinion is a dictum by Chief Justice Taft. At page 54 he states that two contentions were made in the court below: one, that the order of the Com-

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1114 *Brief of Narragansett Electric Lighting Co.*

mission was void on its face for lack of a necessary finding that the existing contract rates were unreasonably low, and the other, that the facts averred in the petition were not sufficient to justify such a finding if it had been made. The second contention is that just referred to which the Circuit Court of Appeals denied. The Chief Justice devoted his entire dictum to the first contention and *did not question* the soundness of decision of the Circuit Court of Appeals on the other point. It seems to be a fair inference that had there been a finding of fact after hearing and investigation that the existing rates were unjust, unreasonable, unjustly discriminatory or unduly preferential, the decree of the Circuit Court of Appeals would have been upheld and it is submitted that this decision effectually disposes of the contention of the Attleboro Company.

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In *Interstate Commerce Comm. v. Union Pacific R. R.*, 222 U. S. 541, 549 (1912), the court said:

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“Where the rates as a whole are under consideration, there is a possibility of deciding, with more or less certainty, whether the total earnings afford a reasonable return. But whether the carrier earned dividends or not sheds little light on the question as to whether the rate on a particular article is reasonable. For, if the carrier’s total income enables it to declare a dividend, that would not justify an order requiring it to haul one class of goods for nothing, or for less than a reasonable rate. On the other hand, if the carrier earned no dividend, it would not have warranted an order fixing an unreasonably high rate on such article.”

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In *Atlantic Coast Line v. Corp. Comm.*, 206 U. S. 1, 26 (1906), the court said:

"Let it also be conceded that a like repugnancy to the Constitution of the United States would arise from an order made in the exercise of the power to fix a rate when the result of the enforcement of such order would be to compel a carrier to serve for a wholly inadequate compensation a class or classes selected for legislative favor *even if, considering rates as a whole a reasonable return from the operation of its road might be received by the carrier.*" 1118

In harmony with the foregoing cases is the doctrine enunciated by the Supreme Court in *Smyth v. Ames*, 169 U. S. 466, 541 (1898):

"The State cannot justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the State has no control. Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business. So far as rates of transportation are concerned, domestic business should not be made to bear the losses on interstate business, nor the latter the losses on domestic business." 1119

This doctrine is approved and affirmed by Mr. Justice Hughes in *Minnesota Rate Cases*, 230 U. S. 352 (1913) at page 435:

1120

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"Where the business of the carrier is both interstate and intrastate, the question whether a scheme of maximum rates fixed by the State for intrastate transportation affords a fair return, must be determined by considering separately the value of the property employed in the intrastate business and the compensation allowed in that business under the rates prescribed. This was also ruled in the Smyth case (*id.*, p. 541). The reason, as there stated, is that the State cannot justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, and, on the other hand, the carrier cannot justify unreasonably high rates on domestic business because only in that way is it able to meet losses on its interstate business."

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In *Mt. Carmel Pub. Utility & Service Co. v. Pub. Util. Comm.*, 297 Ill. 303, 309, 130 N. E. 693 (1921) the court said:

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"Where a public utility corporation is engaged in furnishing to the public, through various departments of its business, different kinds of service, it cannot be compelled to carry on a branch of its business which furnishes one kind of such service at a loss even though at the same time its whole business may be conducted at a profit. *Brooks-Scanlon Co. v. Railroad Com.*, 251 U. S. 396; *Northern Pacific Railroad Co. v. North Dakota*, 236 U. S. 585; *Norfolk & Western Railroad Co. v. West Virginia*, 236 U. S. 605."

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1123

The latest case on the subject is *Vandalia Railroad Co. v. Schnull*, 255 U. S. 113 (1920). In this case, the lower court had adopted the principle that a rate was to be deemed a fair rate if the carrier received in the aggregate sufficient remuneration, even though the rate in question was itself not remunerative. The Supreme Court reversed the lower court on the ground that this was an incorrect principle, holding that the revenue from traffic to which the rates apply is the test of their legality and any deficiency in them cannot be made up by rates on some other traffic. The court quoted from *Northern Pac. Ry. Co. v. North Dakota*, 236 U. S. 585 and from *Norfolk & Western Ry. Co. v. West Virginia*, 236 U. S. 605, and stated:

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"These cases leave nothing to be said, nor need we review the prior cases from which they are deductions."

The Northern Pacific case had carefully reviewed a number of prior decisions of the Supreme Court, many of which appeared to conflict with the doctrine laid down in the Northern Pacific case, and it is plain from the decision that anything in the previous cases, inconsistent with the present decision, the court intended to overrule.

It will be noted that in the Northern Pacific and similar cases the question before the court was as to the reasonableness or unreasonableness of a rate fixed by the State and that in the Wichita case in 268 Fed., the court had before it the question whether the police power could be exercised to alter a rate fixed by contract by the utility itself. The Circuit Court of Appeals in the Wichita case

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held that the same principle applied to each class of cases: namely, that the reasonableness or unreasonableness of a rate must be determined by looking at the return earned by that rate alone regardless of whether that rate was fixed by contract or otherwise and that the fact that the Company was making a fair return from its entire service would not prevent the rate in question from being invalid. It is thinkable that in the type of case represented by the Northern Pacific case, the court might adopt the test now urged by the Attleboro Company, for if a utility's return as a whole is adequate, it is arguable that it is not being compelled to use its property in the public service without adequate return. In the early cases of the first type, the same contention was made as is now made by the Attleboro Company and this seems at one time to have been the view of the United States Supreme Court. See *Willcox v. Consolidated Gas Company*, 212 U. S. 19 (1909).

The Supreme Court in the Northern Pacific case, in adopting the contrary principle, disposed of the *Willcox* case as follows (at p. 601 of the opinion):

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"In *Willcox v. Consolidated Gas Co.*, 212 U. S. 19, in addition to the rate for gas supplied for general consumption in the City of New York, there was a lower rate fixed for that furnished to the City itself. It was said by the court that the criticism of the 'wholesale' rate to the City was met by the fact that the total returns from the sale of gas were adequate. It was not established in that case that this 'wholesale' rate required a service without substantial compensation in addition to cost."

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1129

The Willcox doctrine has thus been overthrown and the doctrine of the Northern Pacific case firmly entrenched by the two later cases above cited.

IV.

Cases cited by Counsel for the Attleboro Company.

Counsel for the Attleboro Company in support of his position quoted from the case of Witchita Railroad and Light Company v. Court of Industrial Relations, 214 Pac. 797, P. U. R. 1923D 593 (Kansas 1923). It is submitted that this case in no way sustains counsel's contention. There were three cases included in the opinion with facts substantially similar. In one the Commission had found that the contract rates in question were discriminatory and unjust, basing this finding on an estimated cost for fuel oil of around \$2.50 a barrel, the cost of fuel oil being 90% of the total expense of serving the customer in question. The customer took the case to the lower court and at the time of the argument the price of fuel oil had dropped to 65c a barrel. The return to the utility, on its investment, with oil even as high as \$1.38 a barrel, was found by the court to be over 30%. The lower court held, therefore, that in the light of the subsequent developments the order of the Commission could not be sustained. The Supreme Court of the State affirmed the decision of the lower court. Considering the fact that at the time of the trial the return being earned on the contract was more

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than compensatory and promised in the future to remain compensatory and that the return in the past, even taking into account losses suffered during one year, had averaged 5.56%, the case is obviously fundamentally different from ours. The other two cases covered by the decision were similarly decided. The evidence in our case is undisputed that the return being earned on the contract is not compensatory, that the losses will become greater in the future, that the receipts under the contract in the past have yielded no return whatever on the investment.

- 1133** (1) "Under this schedule the loss to the Narragansett Company for the period of the contract will be \$1,512,662.91 * * * "

From Page 1 of Exhibit No. 10.

(2) "Loss to Narragansett Electric Lighting Company through selling electricity under R. I. P. U. C. No. 68

"1923	\$45,611.33
1924	50,918.37"

From Page 5 of Exhibit 10.

- 1134** (3) "The total of these last three items, \$16,785.09, \$3,562.65 and \$4,478.74 is \$24,826.48. If we deduct from this amount \$20,500.45, such amount being the net receipts over and above the generating and delivery cost of electricity, we show a loss of \$4,326.03 before giving any consideration to return."

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From Page 3 of Exhibit 2. re 1924.

(4) "Q388. You have testified that this contract involved a current loss of \$15,000 or \$50,000; is there any reason to think that, if the contract was to run its full term on the rates fixed in 68, it will finally work itself out where it pays its full share of the cost to the company? A. It will not.

Q389. Is there any chance of that paying a fair return? A. There is none."

From examination of Mr. Jesse E. Gray. Page 73 of record.

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Counsel for the Attleboro Company also cited *Arkansas Natural Gas Co. v. Arkansas Railroad Commission*, 261 U. S. 379 (1923). In this case the Commission refused to consider a petition for the increase of contract rates because the state statute expressly provided that the Commission should have no jurisdiction to modify any existing contracts and the Supreme Court of the United States sustained this ruling of the Commission. In this case it was perfectly clear that in the exercise of its police power as expressed in the Public Utilities Act the legislature had expressly excepted pre-existing contracts and that the Commission was under no obligation to interfere with such contracts apart from any statute.

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Counsel for the Attleboro Company further relied upon language used by Judge Brown in *Attleboro Steam & Electric Company v. Narragansett Electric Lighting Company*, 295 Fed. 895 (Dist. of

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Rhode Island 1924). Judge Brown, in commenting upon the order of this Commission made in 1921, said (at page 901 of the opinion) :

“There was no finding that a present loss would result in rendering the contract as a whole unprofitable (cases cited). Before a contract can be interfered with under the police power, it must appear that the contract does in some manner affect adversely the welfare of the public * * * Even if the Commission had received an ex parte statement that a single contract was for the time being unprofitable, this was far from establishing the fact that the public interest had been injuriously affected.”

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The above quotation indicates the cause of the language of Judge Brown relied on by counsel for the Attleboro Company. Now, instead of the Commission's having only an ex parte statement that the contract is for the time being unprofitable the uncontradicted evidence now before this Commission is that the contract rate fails by a wide margin to give the Narragansett Company any substantial return, both at the present time and for the entire term of the contract, and fails to pay the actual cost of service exclusive of any return on the investment used in furnishing such service, and that the loss, instead of becoming less, will increase in future years. It necessarily follows that these rates are unjustly discriminatory and preferential as compared with other rates charged by the company, which yield a fair return.

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CONCLUSION.

For the reasons urged in the final agreement of this cause and upon the basis of the authorities above discussed, it is respectfully submitted that Schedule R. I. P. U. C. No. 125 should be approved and established by your Commission as the schedule in force in place of Schedule R. I. P. U. C. No. 68 and No. 101. The right of your Commission to establish such new rates in derogation of an existing contract cannot be disputed and we understand is not disputed by counsel for the Attleboro Company. The only question is whether the existing rate is unreasonable or unjustly discriminatory and this has been established by uncontradicted testimony. No testimony in rebuttal has been submitted by the Attleboro Company. Based upon the computations and the estimates made in the exhibits submitted by the Narragansett Company, the Attleboro Company will have an advantage in rates over the Rhode Island customers of the Narragansett Company over the entire period of the contract to the extent of the aggregate sum of over one million and a half dollars. No estimate has been submitted indicating that this sum is too large. But even if the expectation of the Narragansett Company with reference to the working of the contract in the future should be mistaken, it will at all times be open to the Commission to again revise the rate. Under no circumstances, therefore, can the establishment of Schedule No. 125 work an injustice. The Attleboro Company has already had the advantage of much lower rates than it is entitled to for the past six years, and it seems clear

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that the general public and the Rhode Island consumers should no longer be penalized by maintaining in force a rate which is admittedly far below a fair rate.

Respectfully submitted,

ROPES, GRAY, BOVDEN & PERKINS,
HINCKLEY, ALLEN, TILLINGHAST & PHILLIPS,
Attorneys for Narragansett Electric
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1145 A. R. GRAUSTEIN,
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JOHN B. HOPKINS,
Of Counsel.

Received July 10, 1924
Public Utilities Commission
State of Rhode Island

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Order of Public Utilities Commission

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PUBLIC UTILITIES COMMISSION OF RHODE
ISLAND.PUBLIC UTILITIES COMMISSION
On Its Own Motion

v.

NARRAGANSETT ELECTRIC LIGHTING
COMPANY.

#114.

In the above entitled cause it appearing to the Commission that further time for consideration is needed. 1148

Upon consideration, it is

(857) ORDERED: That tariff R. I. P. U. C. #125, cancelling R. I. P. U. C. #168 and #101 filed by Narragansett Electric Lighting Company to become effective on all electricity delivered after 12 o'clock midnight June 4, A. D. 1924 and which was suspended by Commission Order Number 835½ until August 14, A. D. 1924 is further suspended until September 14, A. D. 1924.

Dated this thirteenth day of August, A. D. 1924.

PUBLIC UTILITIES COMMISSION OF RHODE ISLAND.

By

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WILLIAM C. BLISS,
SAMUEL E. HUDSON,
ROBERT F. RODMAN,
Commissioners.

[SEAL]

A true copy.

Attest:

GEORGE A. CARMICHAEL,
Secretary.

1150

Decision and Order of Commission

COPY

PUBLIC UTILITIES COMMISSION OF
RHODE ISLAND.PUBLIC UTILITIES COMMISSION
on its own motion

v.

NARRAGANSETT ELECTRIC LIGHTING
COMPANY.

No. 114.

1151

Appearances: ROPES, GRAY, BOYDEN & PERKINS.
HINCKLEY, ALLEN, TILLINGHAST &
PHILLIPS,
A. R. GRAUSTEIN
ARTHUR M. ALLEN
F. D. COMERFORD
JOHN B. HOPKINS
Of Counsel for Narragansett Elec-
tric Lighting Company;
ROBERT G. DODGE, for the Attleboro
Steam and Electric Company.

1152

This is an investigation, instituted by the Public Utilities Commission on its own motion, upon the question of whether the existing rates, tolls and charges of the Narragansett Electric Lighting Company, hereinafter referred to as the Narragansett Company, now charged to the Attleboro Steam & Electric Company, hereinafter referred to as the Attleboro Company, or those proposed to be charged to said Company and other electric lighting companies under a certain rate schedule, R. I. P. U. C.

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No. 125, cancelling R. I. P. U. C. No. 68 and No. 101, are unjust, unreasonable, insufficient or unjustly discriminatory, or preferential or otherwise in violation of any of the provisions of the Public Utilities Act of the State of Rhode Island, and otherwise upon the question of the propriety of the proposed change or changes embodied in said schedule No. 125.

Due notice of the investigation and the time and place of public hearing thereon, was given to the Narragansett Company, and to the Attleboro Company, the only customer of said Narragansett Company affected by the proposed rate, and further notice of such investigation and public hearing was given by publication of advertisement in the Providence Journal.

1154

The Narragansett Company and the Attleboro Company were represented by counsel, evidence was presented in the form of oral testimony and various exhibits, and the case was argued upon briefs.

The Narragansett Company operating a large central station for the generation of electricity by steam and located at tide-water in the city of Providence, in the early part of the year 1916, entered into negotiations with the Attleboro Company, at that time serving its customers in the city of and territory surrounding the city of Attleboro, in the Commonwealth of Massachusetts, with electricity generated in its own steam plant, located at said Attleboro, looking to the sale by the Narragansett Company and the purchase by the Attleboro Company of electric energy, to cover a period of twenty years. These negotiations culminated in the execution of a contract between the two companies, dated May 8, 1917.

1155

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The matter was first presented to the Commission in the form of the following request in writing contained in a letter of the Narragansett Company dated May 14, 1917, accompanying the filing of a schedule R. I. P. U. C. No. 68 of the Narragansett Company which letter (Exhibit No. 4) and schedule (Exhibit No. 6) were as follows:

"Providence, R. I.,
May 14th, 1917.

Public Utilities Commission,
1157 Providence, R. I.

Attention William C. Bliss, Esq.,
Chairman.

EXHIBIT
#4

Dear Sirs:

We are handing you herewith, R. I. P. U. C. No. 68, covering special rate for electricity to be sold to the Attleboro Steam & Electric Company at the State Line between Rhode Island and Massachusetts.

1158 This contract is made for a period of twenty (20) years and covers the purchase of all electricity required by the Attleboro Steam & Electric Company for its own uses and for sale in the City of Attleboro and adjacent territory.

As the Narragansett Electric Lighting Company does not have rights to build and maintain transmission lines in the State of Massachusetts, it is necessary that lines be furnished by Massachusetts corporations. Therefore, the contract covers the

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furnishing of a line in the Town of Seekonk, Massachusetts, by the Seekonk Electric Company, and in the City of Attleboro by the Attleboro Steam & Electric Company. Under the terms of the contract the Narragansett Electric Lighting Company pays to the Attleboro Steam & Electric Company fifteen per cent. (15%) of the original cost of said transmission line, and the Attleboro Steam & Electric Company repairs and maintains the same in proper condition to transmit the current contracted for. The Narragansett Electric Lighting Company pays to the Seekonk Electric Company fifteen per cent. (15%) upon the original cost of the transmission line, plus any sums expended thereon in the future, which would be considered by the Massachusetts Board of Gas & Electric Light Commissioners as assets to capitalize. These sums would not include repairs and maintenance on the line.

1160

The Attleboro Steam & Electric Company is to furnish at its own expense the necessary transformers, switching arrangements, etc., to properly receive the current contracted for, and the Narragansett Electric Lighting Company is to pay annually to the Attleboro Steam & Electric Company \$1,750.00 for the operation of the receiving sub-station by the Attleboro Company.

Under the provisions of the contract the price of 8.57 mills per KWH is subject to increase or decrease for fluctuations in the cost of coal to the Narragansett Electric Lighting Company above or below \$3.50 per long ton delivered alongside its generating station.

1161

The contract also provides for decrease of the above mentioned price of 8.57 mills per KWH to cover discoveries, inventions or improvements which materially decrease the cost of producing or trans-

1162

Decision and Order of Commission

mitting said electricity and further provides for increase or decrease in the price of current to cover any increase or decrease in the cost of generating or transmitting the current caused by any new increased or decreased taxes, imposts, etc.

In obtaining the price specified in the contract, we have figured on the purchase of electricity by the Attleboro Steam & Electric Company for the full period of twenty (20) years covered by the contract and have assumed that the current consumption would increase from approximately 4,500,000 KWH during the first year of the contract to approximately 20,000,000 KWH during the last year of the contract. This would make the total sale of current during the twenty years approximately 205,000,000 KWH. The fixed charges on the generating and transmission equipment have been figured for the entire period of the contract and pro-rated for each KWHL. In this way the profit from this particular current is somewhat lower during the earlier years of the contract and somewhat higher during the later years than the average profit which we believe we are entitled to.

1163

We feel that the addition of this load to our generating station will decrease the cost of all current generated and in this way our customers in Rhode Island will receive the benefit of this contract.

1164

We, therefore, respectfully request that you waive the usual statutory notice and allow this contract to go into effect at once.

Yours very truly,

(Signed) ARTHUR B. LISLE,
General Manager."

(Exhibit 4)

"R. I. P. U. C. No. 68

NARRAGANSETT ELECTRIC LIGHTING
COMPANY

EXHIBIT

SPECIAL RATE TO THE ATTLEBORO #6
STEAM AND ELECTRIC COMPANY

CHARACTER OF SERVICE

22,000 volt, 3 phase, 60 cycle alternating current delivered at the state line between the town of East Providence, Rhode Island and the Town of Seekonk, Massachusetts.

1166

CONDITIONS

Transmission lines outside the State of Rhode Island to be furnished by foreign corporations for an annual payment of fifteen per cent. (15%) of their cost.

RATE

8.57 mills per kilowatt hour as registered by the meters installed in the sub-station of the Attleboro Steam and Electric Company.

The Narragansett Company to pay \$1,750.00 per year for operation of the receiving sub-station.

1167

Above price to be subject to increase or decrease for fluctuations in the cost of coal above or below \$3.50 per long ton alongside the Narragansett Electric Lighting Company's station;

1168

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also to increase or decrease to cover increase or decrease in regular or special taxes or new taxes.

TERM OF CONTRACT

Twenty (20) years and thereafter unless discontinued by either party.

Effective"

(Exhibit 6)

1169

The Commission after a presentation of the matter by officers of the Narragansett Company, and acting under the authority of the Public Utilities Act, P. L. 795, Sec. 42, sub-section ., entered the following order:

"On application of the Narragansett Electric Lighting Company for authority to grant a special rate, upon consideration, it is ORDERED: That, for good cause shown, said Narragansett Electric Lighting Company be, and it is hereby authorized to grant a special resale rate to the Attleboro Steam and Electric Company at the State Line between Rhode Island and Massachusetts, said rate to be shown in the tariff of said Narragansett Electric Lighting Company, R. I. P. U. C. No. 68, filed with and made a part of said application."

1170

Public Utilities Commission, Order No. 335, dated May 23, 1917.

On April 6, 1921, the Commission was in receipt of a communication from the Narragansett Company, as follows:

Decision and Order of Commission

1171

**"NARRAGANSETT ELECTRIC LIGHTING
COMPANY**

**EXECUTIVE OFFICES
TURKS HEAD BUILDING
PROVIDENCE, R. I.**

Public Utilities Commission,
State of Rhode Island.
Gentlemen:

We are filing herewith R. I. P. U. C. No. 101, cancelling R. I. P. U. C. No. 68 for the purpose of increasing the rate paid by the Attleboro Steam and Electric Company for electricity.

We respectfully request that you waive the statutory notice and allow this rate to become effective on all electricity billed on and after April 1, 1921.

1172

Very truly yours,

(Signed) E. A. BARROWS,

STAMPED

President.

RECEIVED

April 6, 1921.

**PUBLIC UTILITIES COMMISSION
State of Rhode Island**

STAMPED

In Regular Session

PUBLIC UTILITIES COMMISSION

April 27, 1921

Consent Granted

Order No. 584

1173

G. A. CARMICHAEL,

(Sgd) **GEORGE A. CARMICHAEL,**

Secy.

Secretary."

The accompanying schedule, R. I. P. U. C. No. 101, cancelling R. I. P. U. C. No. 68 was as follows:

"R. I. P. U. C. No. 101

Cancelling R. I. P. U. C. No. 68.

1174

*Decision and Order of Commission***NARRAGANSETT ELECTRIC LIGHTING
COMPANY****Special rate to Attleboro Steam & Electric Company****CHARACTER OF SERVICE**

Electricity to be delivered to the Attleboro Company at the East Providence sub-station of the Narragansett Company or at such other point or points as may be mutually agreed upon by the parties at 22,000 or other agreed voltage. Said electricity to be in the form of three phase, sixty cycles, alternating current.

1175

CONDITIONS

The Attleboro Company to receive electricity at said East Providence Sub-Station and to bear all expense of transmitting the electricity thus received.

RATE

(a) A service charge of such amount as will equal the cost to the Narragansett Company of taxes, insurance, depreciation, obsolescence and any other fixed charges and net the Narragansett Company an eight per cent dividend upon that portion of the cost of the plant which can properly be allocated to the generation of electricity for and the delivery of such electricity to the Attleboro Company.

1176

(b) A charge per kilowatt hour for all electricity delivered which shall be equal to the cost per kilowatt hour to the Narragansett Company of generating and delivering such electricity to the Attle-

Decision and Order of Commission

1177

boro Company at said point of delivery plus a fixed addition thereto of 1 mill per kilowatt hour.

(c) A charge equal to any and all taxes paid by the Narragansett Company on account of or having relation to the electricity generated for or sold or delivered to the Attleboro Company or any payments receivable or received by the Narragansett Company therefor, including the payment received as a service charge or otherwise incidental to or arising out of the service rendered or to be rendered by the Narragansett Company to the Attleboro Company.

1178

DISCOUNTS

The above rate is net.

TERM OF CONTRACT

April 1, 1921 to April 1, 1938.

Effective on all electricity billed on and after April 1, 1921.

(Stamped)

RECEIVED

April 6, 1921

Public Utilities Commission

State of Rhode Island."

1179

(Signed) GEORGE A. CARMICHAEL,
Secretary.

1180

Decision and Order of Commission

The Commission thereafter held an informal conference with representatives of the Narragansett and the Attleboro companies and upon the failure of these companies to arrive at a mutually satisfactory agreement, entered the following order:

"PUBLIC UTILITIES COMMISSION OF RHODE ISLAND.

1181

Petition of Narragansett Electric Lighting Company filed with accompanying schedules on the sixth day of April, A. D. 1921 requesting waiver of statutory thirty days' notice upon a certain rate schedule R. I. P. U. C. Number 101, cancelling R. I. P. U. C. Number 68, for the purpose of increasing the rate paid by the Attleboro Steam and Electric Company for electricity considered on the sixth day of April A. D. 1921 at an informal hearing at which representatives of both companies were in attendance and heard.

1182

It appearing that a continuance of the operation of the terms of the rate contract between said companies would result in a loss to the petitioning company and would, therefore, discriminate against its other consumers, and action upon said petition having been deferred by the Commission in order that said companies might continue negotiations for the purpose of arriving at a mutually satisfactory and equitable modification of said rate contract.

It now appearing that such negotiations have been without result.

Upon consideration, it is

Decision and Order of Commission

1183

ORDERED: That, for good cause shown, said Narragansett Electric Lighting Company be and it hereby is authorized to put into effect without the statutory publication and notice to the Commission, tariff R. I. P. U. C. Number 101, cancelling R. I. P. U. C. Number 68, for the purpose of increasing the rate paid by the Attleboro Steam and Electric Company for electricity.

April 27, 1921.

No. 584.

(Signed) GEORGE A. CARMICHAEL,
Secretary."

1184

In subsequent proceedings before the District Court of the United States the legality of said rate schedule No. 101, and the order of the Commission thereon, was denied. (Attleboro Steam and Electric Company v. Narragansett Electric Lighting Co., 295 Fed. 895 (Dist. of Rhode Island 1924).

Thereafter on May 7, 1924, the Narragansett Company filed with the Commission a schedule R. I. P. U. C. No. 125, cancelling R. I. P. U. C. Nos. 68 and 101, called Electric Lighting Company Rate "N", applicable by its terms to all public utilities which now purchase or may hereafter purchase electrical energy beyond a certain minimum amount, which schedule follows:

1185

"R. I. P. U. C. No. 125
Cancelling R. I. P. U. C. Nos. 60 & 101
EXHIBIT
No. 3.
Docket No. 114.

1186

*Decision and Order of Commission***NARRAGANSETT ELECTRIC LIGHTING
COMPANY.****ELECTRIC LIGHTING CO. RATE N.****CHARACTER OF SERVICE**

1187

Electricity will be supplied under this rate to Electric Lighting Companies for use by them or for sale to their customers. Such electricity will be delivered in the form of 3 phase, 60 cycle, alternating current at the voltage at which it is transmitted to the point of delivery, which point of delivery shall be such location as may be mutually agreed upon provided, however, that in all cases where the customer is located without the State of Rhode Island, such location shall be at the Rhode Island State Line. Meters for registering the current delivered and for the determination of the maximum taking shall be located at the point of delivery, unless some other location may be mutually agreed to, in which case the necessary adjustment shall be made in the meter readings to ascertain the current delivered and the maximum taking as of the point of delivery.

RATE

1188

Demand in Kilowatts	Annual Investment Charge Per Kilowatt of Demand	Electricity Charge Per Kilowatt Hour
3,000 or over	\$19.00	8 mills

TERM OF CONTRACT**One year or over.****BILLS**

Bills shall be rendered monthly for one-twelfth part of the annual investment charge and for elec-

Decision and Order of Commission

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tricity delivered during the previous month and shall be due and payable within fifteen days of rendition.

STANDARD CONTRACT RIDERS AND TERMS AND CONDITIONS

The Company's Standard Contract Riders and Terms and Conditions on file from time to time with the Public Utilities Commission, where not inconsistent herewith or otherwise mutually agreed, are made a part hereof.

Effective on all electricity
delivered after 12 o'clock
midnight June 14, 1924."

1190

The Narragansett Company in its letter accompanying the filing of said Schedule No. 125, requested that the Commission, "upon its own motion, hold a public hearing, make full investigation, and if (the) Commission finds that the rate R. I. P. U. C. No. 68 is unjust, unreasonable, insufficient or unjustly discriminatory, or to be preferential or otherwise in violation of the (public utilities) act, order this rate superseded by the new general rate for public utilities filed herewith, if (the) Commission finds that this rate is just and reasonable; or by such other rate as (the) Commission shall find to be just and reasonable * * *".

1191

Thereafter the Commission instituted the present proceedings.

The evidence submitted upon the part of the Narragansett Company, through the testimony and exhibits of Jesse E. Gray, assistant secretary, in

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charge of rate schedules, and contracts and contractual relations with customers, indicates the past, present and future results of the operation of rate Schedule No. 68, and the contract with the Attleboro Company upon which it is based, as follows:

"LOSS TO N. E. L. CO. THROUGH SELLING ELECTRICITY UNDER R. I. P. U. C. #68.

			K.W.H. Measured at East Providence	Unit Generating and De- livery Cost	Total Gen- erating and Delivery Cost	Total Capital Cost
1193	(9 Mo.)	1918	3,224,946	\$.0116998	\$37,731.40	\$37,207.67
		1919	5,060,860	.0117977	59,706.74	43,672.50
		1920	5,929,570	.0116329	63,978.36	48,998.05
		1921	5,767,848	.00988456	56,012.60	58,438.12
		1922	7,411,960	.0079967	59,271.23	72,090.17
		1923	10,171,600	.0075348	76,640.90	66,111.78
		1924	10,800,000	.0077798	84,021.84	70,437.08
		1925	11,890,800	.0059444	70,726.47	77,573.02
		1926	13,091,771	"	77,822.72	85,405.52
		1927	14,414,040	"	85,682.82	94,026.79
		1928	15,869,858	"	94,336.78	103,528.51
		1929	17,472,714	"	103,864.80	113,984.09
		1930	19,237,458	"	114,355.15	125,485.22
		1931	21,180,441	"	125,968.61	138,160.31
		1932	23,319,666	"	138,621.42	152,119.42
		1933	25,674,952	"	152,622.18	167,490.94
		1934	28,268,122	"	168,037.02	184,404.68
1935	31,123,202	"	185,008.76	203,021.55		
1936	34,266,645	"	203,694.64	223,529.05		
1937	37,727,576	"	224,267.80	246,109.50		
					\$2,187,372.24	\$2,311,793.97

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	Total Cost of Supplying Service	Net Receipts From Attleboro Co. Under R.I.P.U.C. #68	Net Loss to N.E.L. Co. Under R.I. P.U.C. #68
(9 Mo.) 1918	\$74,939.07	\$36,158.03	\$38,781.04
1919	103,379.24	54,643.64	48,735.60
1920	117,976.41	76,582.02	41,394.39
1921	114,450.72	60,598.24	53,852.48
1922	131,361.40	70,013.33	61,348.07
1923	142,752.68	97,141.35	45,611.33
1924	154,458.92	103,540.55	50,918.37
1925	148,299.49	97,729.29	50,570.20
1926	163,228.24	108,250.52	54,977.72
1927	179,709.61	119,834.39	59,875.22
1928	197,865.29	132,588.23	65,277.06
1929	217,848.89	146,630.21	71,218.68
1930	239,840.37	162,090.43	77,749.94
1931	264,128.92	179,112.12	85,016.80
1932	290,740.84	197,853.01	92,887.83
1933	320,113.12	218,486.73	101,626.39
1934	352,441.70	241,204.46	111,237.24
1935	388,030.31	266,216.67	121,813.64
1936	427,223.69	293,755.12	133,468.57
1937	470,377.30	324,074.96	146,302.34
	<hr/> \$4,499,166.21	<hr/> \$2,986,503.30	<hr/> \$1,512,662.91"

1196

The Commission is satisfied that the method used and principles applied in the determination of costs as set forth in Exhibit 10 are correct; that upon the evidence before the Commission, it appears that the loss to the Narragansett Company resulting from the supply of electric energy to the Attleboro Company under Schedule #68, including a return of eight per cent. upon that part of its investment used in rendering such service, has been for the years 1918 to 1923 inclusive as follows:

*1918 (9 months)—	\$29,479.12	1921—	\$53,842.48
1919	— 48,735.60	1922—	61,348.07
1920	— 41,394.39	1923—	45,611.33

1197

*(See letter Mr. Gray, July 10, 1924, correcting Exhibit 10.)

(Exhibit 10)

The Commission further finds upon the evidence, that the aggregate loss to the Narragansett Company from serving the Attleboro Company for the term of the contract under the contract rate and Schedule 68, after a return of 8% on the investment devoted to such Attleboro Company service will be not less than \$1,500,000.00.

(Exhibit 10)

The evidence further shows and the Commission finds that the method used and the principles applied in the determination of allocation of plant to the Attleboro service, the receipts from such service, the operating costs thereof, and the net financial results from the service rendered the Attleboro Company, are correct, as set forth in Exhibit 2, and the testimony of Mr. Gray, and that the result of such operation for the year 1923, shows that the Narragansett Company suffered an operating loss of not less than \$4,326.03, without any return whatever upon the investment devoted to such service. It also appears that the probable operating loss during the year 1924 to the Narragansett Company is not less than \$6,881.95, before any return upon investment.

(Exhibit 2 and testimony J. E. Gray, pp. 80-82.)

The evidence further shows that the estimated annual net losses to the Narragansett Company for service under Schedule #68 after an 8% return on capital, for the remaining years of the contract, are as follows:

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1924—\$50,918.37	1931—\$ 85,016.80
1925— 50,570.20	1932— 92,887.83
1926— 54,977.72	1933— 101,626.39
1927— 59,875.22	1934— 111,237.24
1928— 65,277.06	1935— 121,813.64
1929— 71,218.68	1936— 133,468.57
1930— 77,749.94	1937— 146,302.34

(Exhibit 10)

The contract of 1917 was entered into at the solicitation of the Narragansett Company which expressly stated that it estimated that the profit from the sale of current to the Attleboro Company would be somewhat lower during the earlier years of the contract and somewhat higher during the later years than the average profit which the company believed itself entitled to.

1202

(Exhibit 4—p. 2.)

At the time the contract was entered into the Attleboro Company was producing its supply of electric energy at its generating plant in Attleboro, and dismantled its plant after the supply of electric energy from the Narragansett Company became available. The evidence does not show to what extent said plant was adapted to the further demands thereon, or its generating costs as compared with similar costs under the contract and Schedule 68 based thereon.

1203

Rate Schedule R. I. P. U. C. No. 68 of the Narragansett Company, which is based upon the contract of 1917, was approved by this Commission under the authority of the following statute:

"Sec. 42. The provisions of sections thirty-nine, forty and forty-one (unjust discrimination, discrim-

1204

Decision and Order of Commission

inations and undue preference, and rebates, concessions and discriminations) of this act shall be subject to the following exceptions:

1205

“(b) With the approval of the Commission any public utility may give free transportation or service, upon such conditions as such public utility may impose, or grant special rates therefor to the State, to any town or city, or to any water or fire district, and to the officers thereof, for public purposes, and also to any special class or classes of persons, not otherwise referred to in this section, in cases where the same shall seem to the Commission just and reasonable, or required in the interests of the public, and not unjustly discriminatory.”

(P.L. Ch. 795, Sec. 42, Sub-section (b).)

The Commission has always construed such approval as authority for the utility to render service to a consumer of a special class at the rate contained in the schedule approved and under the terms of the contract, until further order of the Commission.

We do not believe that it is the intent of the law that the approval of the Commission should preclude the Commission from further jurisdiction over such a rate in the public interest.

1206

If such is the intent of the law, the Commission would feel that such authority should be little, if ever, exercised.

In this particular case it appeared to the Commission at the time the schedule was submitted for approval that the supply of electric energy by the Narragansett Company to the Attleboro Company under the contract and schedule was to the mutual

benefit of both companies, offering to the former a large consumer at an average profitable rate during the terms of the contract, and to the latter a dependable supply of energy at a cost which the latter company must have considered lower than its own cost would be under independent operation. The other consumers could also anticipate a lowered cost of production to the Narragansett Company by reason of the increased load upon the central station.

The principal reason for the loss to which the Narragansett Company is subjected with reference to this rate schedule and contract is due to the sudden, substantial and permanent increase in its average unit cost of generating plant, due to the increased costs which have followed the change of conditions resulting from the world war.

1208

The testimony of Mr Gray shows that he assumed plant unit costs of \$45.00 to \$50.00 per kilowatt hour of peak primary load, as a basis in estimating how the contract would operate as to the Narragansett Company, and that the trend of unit cost in that company and all steam generating stations had shown the previous five years a gradual tendency downward.

(Testimony Gray, pp. 83 and 120.)

It further appears that the actual unit costs of the Narragansett Company were as follows:

1209

1918	\$77.53	(Apr. to Dec.)	1922	\$109.33
1919	81.46		1923	88.81
1920	81.05		1924	89.15 (est'd)
1921	108.79			

1210

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(Exh. 10, pages 13-19)

The evidence shows that there is no present reason to anticipate any reduction in such unit costs.

1211 After a careful consideration of all the evidence the Commission is of the opinion and therefore finds that the rates contained in schedule R. I. P. U. C. No. 68 are unjust, unreasonable, insufficient and unjustly discriminatory and preferential and otherwise in violation of the provisions of the Public Utilities Act in that the said rates, tolls and charges yield no return on the value of the property used by the Narragansett Company in rendering service to the Attleboro Company, while the rates, tolls and charges charged by the Narragansett Company to its other customers yield a fair return on the value of the property used for such service.

The Commission further finds that a continuance of service to the Attleboro Company under said schedule No. 68 will be detrimental to the general public welfare, and will prevent the Narragansett Company from performing its full duty towards its other customers.

1212 The Commission having found that the rates contained in Schedule No. 68 are unjust, unreasonable, insufficient and unjustly discriminatory and preferential, and otherwise in violation of the Public Utilities Act, it is within the power and becomes the duty of the Commission to fix and order substituted for such existing rates, tolls and charges, such rates, tolls and charges as shall be just and reasonable.

(P. L. 1923. Ch. 253, Sec. 22 (3685).)

The Narragansett Company filed its schedule R. I. P. U. C. No. 125, and has presented evidence to show that the same is just and reasonable.

The basis for said schedule is fully explained in Exhibit No. 1, as follows:

**"BASIS FOR SCHEDULE R. I. P. U. C. No. 125
Exhibit
#1**

On the accompanying sheet entitled "Generating Plant" Data will be found the following:

1214

(a) The Book Value of the "Generating Plant". The "Generating Plant" in this case means the present generating station of the Narragansett Company, the coal and oil handling apparatus and equipment located at such generating station, and the land allocated to such property. It does not mean the 66,000 volt sub-station, the 22,000 volt sub-station or land allocated to such sub-stations.

(b) The reserve for Depreciation applicable to the "Generating Plant".

(c) The Depreciated Book Value of the "Generating Plant".

(d) The Peak Primary Load on the "Generating Plant".

1215

(e) The Unit Cost of the "Generating Plant".

The Book Value of the "Generating Plant" contains the book value of the "Generating Plant" as

1216

Decision and Order of Commission

of the first day of each month. The values for the first two months are those shown on our books, plus storehouse and office building land. This land, although used in conjunction with our generating station, was not carried on our books as a part of our "Generating Plant" until March 31st. For March 1st we have added to the value determined as above for February 1st, \$758,000 on account of the new switchhouse; for June 1st, \$125,000 was added to the previous month's value on account of the switchhouse; for December 1st, \$1,050,000 was added to the previous month's value on account of a new boiler house extension. On the first of each month from and including March 1st, \$2,250 was added to the previous month's value. This is estimated to cover the ordinary miscellaneous small additions to our "Generating Plant".

1217

The Reserve for Depreciation is that part of the Reserve for Depreciation carried on our books in respect to the generating and delivery plant which we feel is applicable to the "Generating Plant", the book value of which are set forth in the first column and is arrived at in the following manner:

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For the first three months we use such part of the reserve herein mentioned as is equal to the ratio between the total book value of our generating and delivery plant and the book values of our "Generating Plant" as set forth in column 1. The reserve for each succeeding month is established by adding to the reserve for the first day of the preceding month one-twelfth part of 3 percentum of the depreciated value of the "Generating Plant" for the first day of the preceding month.

The Depreciated Book Value of the "Generating Plant", is arrived at by deducting the Reserve for Depreciation contained in the second column from the Book Values of the "Generating Plant" contained in the first column.

The peak primary load is the maximum fifteen minute peak of primary power measured at the East Providence, Admiral Street, Elmwood and Elm Street Sub-Stations as to all electricity which passes through such sub-stations and at the "Generating Plant" as to all electricity which does not pass through such sub-stations. In preparing these figures we have assumed that there will be no increase in the primary load after March 1st until some time in December, possibly between the 15th and 25th.

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The unit cost of the "Generating Plant" is obtained by dividing the depreciated book value of the "Generating Plant" by the peak primary load.

The average unit cost of the "Generating Plant" for the year obtained by dividing the sum of the unit cost for each month by twelve, is \$89.15. Multiplying this figure by $13\frac{1}{4}\%$, covering an 8% return, 3% depreciation and $2\frac{1}{4}\%$ for taxes and insurance not including, however, any Federal or State taxes, equals \$11.81, which divided by 95.5%, to cover losses from the sub-station to the point of delivery at the State Line, equals \$12.37, this sum being that part of the annual investment charge necessary to cover the return, depreciation and taxes herein set forth on the Depreciated Book Value of the "Generating Plant".

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*Decision and Order of Commission***"GENERATING PLANT" DATA**

1924		Book Value of "Generat- ing Plant"	Reserve for Depreciation	Depreciated Book Value of "Generat- ing Plant"	Peak Primary Load	Un- Co
January	1st	\$5,699,317.47	\$693,401.68	\$5,005,915.79	63,970 KW	\$78.
February	1st	5,719,572.96	705,265.38	5,014,307.58	63,970 "	78.
March	1st	6,479,822.96	716,804.05	5,763,018.91	64,615 "	89.
April	1st	6,482,072.96	731,211.60	5,750,861.36	64,615 "	89.
May	1st	6,484,322.96	745,588.75	5,738,734.21	64,615 "	88.
June	1st	6,611,572.96	759,935.59	5,851,637.37	64,615 "	90.
July	1st	6,613,822.96	774,564.68	5,839,258.28	64,615 "	90.
August	1st	6,616,072.96	789,162.83	5,826,910.13	64,615 "	90.
September	1st	6,618,322.96	803,730.11	5,814,592.85	64,615 "	89.
October	1st	6,620,572.96	818,266.59	5,802,306.37	64,615 "	89.
November	1st	6,622,822.96	832,772.36	5,790,050.60	64,615 "	89.
December	1st	7,675,072.96	847,247.49	6,827,825.47	64,615 "	105.

1223

Average Unit Cost \$89.15**\$89.15 times 13¼% equals \$11.81****\$11.81 divided by 95.5% equals \$12.37**

In ascertaining that part of our annual investment charge having relation to the transformation and transmission of electricity it seems desirable to give particular attention to the investment in transformation and transmission equipment and apparatus necessary or useful in respect to the electricity to be delivered to the Attleboro Steam & Electric Co. The accompanying data, therefore is in relation to the supply of electricity to such Company.

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Electricity for the Attleboro Company is generated at 11,000 volts and transformed from such voltage to 22,000 volts by means of transformers located near the "Generating Plant". Such electricity is then transmitted to the East Providence Sub-Station by means of underground cables, thence by underground cables to a riser approximately 1,600 feet from such sub-station, and from such riser by aerial line to a point on the State Line between

Decision and Order of Commission

1225

Rhode Island and Massachusetts where such aerial line crosses the State Line. From such point on the State Line electricity is transmitted over lines owned by the Seekonk Electric Company and the Attleboro Steam & Electric Company to a location near the generating plant of the Attleboro Company.

Electricity is transformed before transmission to the East Providence Sub-Station by means of 3-5, 000 K. V. A. transformers located near the "Generating Plant" and is transmitted to such sub-station by means of five cables which require approximately 60,975 feet of duct. The values of these transformers, cables and ducts are shown on the sheet entitled "Transformation and Transmission Data".

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The cost of the aerial line is arrived at by taking the total cost of the line from the sub-station to the vicinity of the Attleboro Company's generating station and deducting therefrom the amounts paid by the Attleboro Steam & Electric Company and the Seekonk Electric Company for that portion of the line lying in their respective territories.

The value of the transformers, cables and ducts is decreased 12.16% to allow for depreciation, such percentage decrease in value being arrived at by dividing the Reserve for Depreciation for January 1st as shown on the sheet entitled "Generating Plant" Data by the Book Value of the "Generating Plant" at the same date.

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The sub-station values are those shown on our books as of March 1, 1924. For the purpose of the present calculations such values are decreased by the value of the land, building and equipment chargeable to street lighting and further decreased

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Decision and Order of Commission

to allow for depreciation by the same percentage used in depreciating the cables, transformers and ducts.

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The depreciated value of the transformers, cables and ducts would thus amount to \$150,752.82 and that of the sub-station building, land and equipment minus any portion chargeable to street lighting, \$103,512.53. The estimated load at this sub-station is 13,000 kilowatts of which 220 kilowatts is chargeable to street lighting. In arriving at the investment per kilowatt in transformers, cables and ducts we have divided the total investment in such property by 13,000. In arriving at the investment per kilowatt in sub-stations land, structure and equipment, we have divided the investment in such property by 12,780. The kilowatt cost of transformers, cables and ducts thus amounts to \$11.60 and of sub-station land, structure and equipment, \$8.10. These amounts multiplied by 13¼% total \$2.61, which divided by 95.5% to cover drop between the sub-station and the point of delivery equals \$2.73, this sum being that part of the annual investment charge necessary to cover an 8% return, depreciation and taxes not including, however, any Federal or State taxes on the depreciated book value of transformers, cables, ducts and sub-station land, structure and equipment as herein set forth.

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The value of the aerial line determined in the manner set forth above is \$73,886.23. This value is depreciated by taking a proportionate part of a reserve covering transmission and distribution lines and other equipment equal to the ratio between \$73,886.23 and the value of such transmission and

Decision and Order of Commission

1231

distribution lines and other equipment. This part of such reserve is equal to \$10,221.84. Deducting this from the book value of the line we obtain a net depreciated value of \$63,664.39, which divided by the Attleboro Company's peak load; namely, 3,840 kilowatts measured at the East Providence Sub-Station, gives a kilowatt cost of \$16.58. This multiplied by 15% to cover an 8% return, depreciation, taxes and maintenance, equals \$2.49 which divided by 95.5% to cover loss between the sub-station and the point of delivery, equals \$2.61, this sum being that part of the annual investment charge necessary to cover such return, depreciation and taxes not including, however, any Federal or State taxes on the depreciated book value of the transmission line from the East Providence Sub-Station to the point of delivery at the State Line, as herein set forth and to provide for the maintenance of such line.

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1234

*Decision and Order of Commission***TRANSFORMATION AND TRANSMISSION DATA**

3—5,000 K.V.A. Transformers	X 1621	\$16,230.84	
	X 1586	25,378.95	
5—Cables	X 1514	14,902.03	
	X 1586	43,519.91	
	X 1621	22,687.65	
	X 2540	18,415.18	
Duct—60,975 feet @ 50c		30,487.50	
		<u>\$171,622.06</u>	
	Dep.	20,869.24	\$150,752.82 divided by 13,000 equals \$11.60 times 13¼% equals \$1.54
Sub-Station, East Providence			
Land, Book Value 3/1/24		\$1,793.15	
Structure, Book Value 3/1/24		28,487.58	
Equipment, " " "		104,447.92	
		<u>\$134,728.65</u>	
Less Street Lighting, Land, Build- ing & Equipment		16,886.52	
		<u>\$117,842.13</u>	
	Dep.	14,329.60	\$103,512.53 divided by 12,780 equals \$8.10 times 13¼% — 1.07
			<u>\$2.61</u>
			\$2.61 divided by 95.5% = \$2.73
Estimated Total Load	13,000 K.W.		
Street Lighting Demand	220 "		
	<u>12,780 K.W.</u>		
Attleboro Load	3,840 K.W.		
Transmission Line X 1595, N. E. L. Co.		\$73,886.23	
share only		<u>10,221.84</u>	
	Dep.		63,664.39 divided by 3,840 K.W. equals \$16.58 per KW
			\$16.58 times 15% equals \$2.49
			\$2.49 divided by 95.5% equals \$2.61

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Decision and Order of Commission

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The foregoing data shows the necessity of including in the annual investment charge per kilowatt of demand the following items:

On account of generating plant	\$12.37
On account of transformers, cables and sub-stations	2.73
On account of aerial transmission line	2.61
	<hr/>
	\$17.71
Of the first two items totalling \$15.10	8 or
	<hr/>
	13.25

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\$9.117 is the amount of the 8% return contained in the investment charge per kilowatt of demand. Of the last item; namely, \$2.61, 8 or \$1.386 is the

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amount of the 8% return contained in the investment charge per kilowatt of demand. The sum of these two items equals \$10.503. In order that this amount may be left after paying Federal Income Taxes of 12½%, it will be necessary to receive \$1.50 more. This added to the \$17.71 set forth above amounts to \$19.21, which fully justifies the \$19.00 investment charge contained in our Schedule No. 125.

In ascertaining the electricity charge we have computed the cost of generating electricity at our "Generating Plant" and delivering the same to the East Providence, Admiral Street, Elmwood and Elm Street Sub-Stations and dividing the same by the total number of kilowatt hours sent out from the above mentioned sub-stations and from the "Gener-

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Decision and Order of Commission

ating Plant" as to such electricity as does not pass through any of the above mentioned sub-stations.

Such unit generating and delivery cost is ascertained for each month and there is added thereto one mill to cover such of the general expenses as should be charged to electricity delivered under this schedule and which have not otherwise been given consideration in the schedule as well as to provide for contingencies. The total unit generating and delivery cost thus obtained is multiplied by the number of kilowatt hours delivered to the Attleboro Company each month to obtain the total generating and delivery cost each month of the electricity delivered to the Attleboro Company. The total cost for the twelve months is then divided by the total number of kilowatt hours delivered to the Attleboro Company during the year. These figures are for the calendar year 1923. The generating and delivery cost includes the following:

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Labor

Generating Station Superintendence

Boiler Room, Turbine Room, Electrical & Miscellaneous Labor

Superintendence & Labor at the Admiral Street, East Providence and Elmwood Sub-Station

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Superintendence and Labor on lines between the Generating Station and above mentioned sub-stations

Fuel

Handling & Storage Charges on Fuel

Interest on Fuel Stock

Decision and Order of Commission

1243

Insurance on Fuel

Fuel Losses

Ash Handling

Water

Lubricants

Supplies & Miscellaneous Expenses at the Generating Station, Admiral Street, Elmwood & East Providence Sub-Stations and for Transmission Lines

Maintenance, Repairs at the Generating Plant and each of the above mentioned sub-stations

Maintenance & Repairs of Transmission Facilities between the Generating Plant and the various sub-stations herein enumerated

1244

Miscellaneous Storehouse Expenses

Purchasing Expense

Accounting Department Expense

Automobile Expense

Liability Insurance

Interest on Invoices paid in advance

Current and Electricity Purchased

The generating and delivery cost of the electricity delivered to the Attleboro Company for the year 1923 ascertained as above set forth is \$.0075348. This divided by 98% to cover the losses between the East Providence Sub-Station and the point of delivery at the State Line gives us a net cost of electricity at such point of delivery of \$.0076886.

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It is estimated that fuel during 1924 will cost 7 cents more per barrel than during 1923. This, on the basis of 292 kilowatt hours per barrel of fuel at our generating station, would mean an increase

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Decision and Order of Commission

per kilowatt hour at such generating station of \$.00024, which divided by 95% to cover losses between the generating station and the point of delivery at the State Line, gives us an increase per kilowatt hour of \$.00025 due to increased cost of fuel. This added to the unit cost above set forth, gives a total unit cost at the State line of \$.0079386.

GENERATING AND DELIVERY COST

	1923	K.W.H. Delivered	Unit Price	Total Cost
	January	934,200	.0070293	\$6,566.77
	February	829,100	.0069171	5,734.97
1247	March	872,500	.0072709	6,343.86
	April	794,400	.0083663	6,646.19
	May	795,800	.0083186	6,619.94
	June	733,800	.0073047	5,360.19
	July	704,100	.0071113	5,007.07
	August	758,500	.0070595	5,354.63
	September	783,100	.0074808	5,858.21
	October	979,500	.0075158	7,361.73
	November	930,500	.0075019	6,980.52
	December	1,056,100	.008339	8,806.82
		<hr/> 10,171,600		<hr/> \$76,640.90

\$76,640.90 divided by 10,171,600 equals \$.0075348

\$.0075348 divided by 98% equals \$.0076886

1248 Increase due to fuel, \$.00024 at Generating Station

\$.00024 divided by 95% equals \$.00025 increase at point of delivery

\$.0076886

.00025

\$.0079386

Decision and Order of Commission

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The sheet entitled "Details of General Expense for 1923" contains the several accounts of our general expense for 1923. Those items which do not enter into the computations upon which this schedule is based, except through the one mill per kilowatt hour addition to the generating and delivery cost, are designated by an asterisk.

DETAILS OF GENERAL EXPENSE FOR 1923

	Cost in Mills		
	Per KWH Sold		
	This Year	This Year	
*Salaries of General Officers	\$59,493.63	.181	1250
*Directors' Fees	4,560.00	.014	
Salaries, Acctg. Dept. & Gen. Of- ficers' Clks.	25,706.57	.078	
*Stationery & Printing	5,665.48	.017	
*Postage	2,421.07	.007	
*Telephones & Telegrams	2,055.42	.006	
*Rent	6,787.30	.021	
*Sundry Expense in General Office	3,834.89	.012	
*Miscellaneous General Expense	54,528.60	.166	
*Law Expense—General	8,384.49	.025	
Insurance—Liability	11,831.15	.036	
Insurance—Fire	8,729.22	.027	
Insurance—Use & Occupancy	1,351.26	.004	
*Insurance—Fidelity	208.93	.001	
*Taxes—Franchise	15,128.66	.046	
Taxes—Income, Federal	243,208.00	.739	
*Taxes—State	47,322.76	.144	
Taxes—Town & City	189,643.79	.577	1251
*Taxes—Federal Capital Stock	20,721.50	.063	
Duplicate Electric Charges	13,024.15	.040	
*Property Damage	909.78	.003	
Purchasing Dept., Salaries and Expense	11,236.15	.034	
Storehouse Salaries & Expense	57,715.25	.175	
*Repairs, Bldgs., Shop, Store- house & Garage	3,465.52	.011	

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Decision and Order of Commission

*Labor & Expense, Heating Plant	9,980.67	.030
Automobile Expense	43,102.73	.131
*Uncollectible Accounts	10,127.15	.031
*Donations & Charities	1,575.00	.005
*Welfare Work	22,036.13	.067
*Sick, Injured and Pensioned Em- ployees	1,387.98	.004
*General Advertising	3,639.38	.011
<hr/>		
Total General Expense	\$863,734.31	2.626
Electricity Sold in K. W. H. 328,889,955		
Total *Items	\$285,585.60	.869
Total Other Items	591,172.86	1.797

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In above totals the credit item "Duplicate Electric Charges" is disregarded."

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After a consideration of all the evidence the Commission finds that the statements set forth in said Exhibit 1 are correct, and that the generating and delivery cost of kilowatt hours delivered to the Attleboro Company in 1923 was .0076885 and such cost for 1924 is no less, and that the annual cost per kilowatt of demand of carrying that part of the generating plant, properly allocable to the service furnished the Attleboro Company in 1924 was \$12.37 and for that part of the investment in transformers, cables, sub-stations so allocable was \$2.73 and for aerial transmission line devoted to such service was \$2.61, making a total cost per kilowatt of demand of \$17.71; that adjusted to the 12½% Federal Income Tax to ascertain the net return, the amount must be raised to \$19.21, and that upon these facts found by the Commission, the service charge of \$19.00 set forth in Schedule R. I. P. U. C. No. 125 is just and reasonable.

Decision and Order of Commission

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In determining the value of the whole or any part of the investment or property of the Narragansett Company for the purpose of these findings the Commission has considered all relevant facts, including original cost, reproduction cost, money honestly and prudently invested, the par value of securities outstanding, the market value of securities outstanding, the sum required to meet operating expenses, and other facts which are relevant, all of which facts the Commission has, after investigation and hearing and considering all the evidence and arguments of counsel, carefully considered and to each of which it has given due weight.

The Commission find that under present conditions a return of approximately 8% on the value of the investment devoted to the furnishing of service to the Attleboro Company is a reasonable return, and that considering all the evidence submitted, service by the Narragansett Company under Schedule R. I. P. U. C. No. 125, will yield to the Narragansett Company approximately 8% on the investment devoted by the Narragansett Company to the furnishing of such service.

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For all of the reasons hereinbefore stated the Commission finds that the rates contained in Schedule R. I. P. U. C. No. 125, are just, reasonable, sufficient and not unjustly discriminatory or preferential or otherwise in violation of any of the provisions of the Public Utilities Act for the reason that such rates, tolls and charges yield a fair return and no more than a fair return on the value of the property used for such service, and that said rates should be substituted for the rates contained in Schedule R. I. P. U. C. No. 68.

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Decision and Order of Commission

It is therefore ORDERED:

(1) That the rates contained in Schedule R. I. P. U. C. No. 68 of the Narragansett Electric Lighting Company, are unjust, unreasonable, insufficient and unjustly discriminatory and preferential and otherwise in violation of the Public Utilities Act, and

(2) That the rates contained in Schedule R. I. P. U. C. No. 125 of the Narragansett Electric Lighting Company are just and reasonable, and may be allowed to become effective on all electricity delivered on and after February 1, 1925.

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Dated this twenty-first day of January, A. D. 1925.

Order No. 876.

PUBLIC UTILITIES COMMISSION OF
RHODE ISLAND,

By WILLIAM C. BLISS,
SAMUEL E. HUDSON,
ROBERT F. RODMAN,
Commissioners.

A true copy.

Attest:

(Signed) GEORGE A. CARMICHAEL,
Secretary.

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Service acknowledged this twenty-first day of January, A. D. 1925.

NARRAGANSETT ELECTRIC LIGHTING CO.
By E. A. BARROWS, President.

Service acknowledged this twenty-seventh day of January, A. D. 1925.

ROBERT G. DODGE.
By JOHN M. RAYMOND.

STATE OF RHODE ISLAND AND PROVIDENCE
PLANTATIONS

1261

At the Supreme Court of said State, holden at Providence, within and for said State.

M. P. 436. Attleboro Steam & Electric Company
vs. Public Utilities Commission et al.

BE IT REMEMBERED: That on the 2d day of February, A. D. 1925, The Attleboro Steam & Electric Company, a corporation organized under the laws of the Commonwealth of Massachusetts, appealed to this Court and filed and preferred against William C. Bliss, Robert F. Rodman and Samuel E. Hudson constituting the Public Utilities Commission of Rhode Island, and the Narragansett Electric Lighting Company, a corporation organized under the laws of Rhode Island, the following petition, and thereupon a citation was duly ordered, issued and served upon the respondents. Thereafter appearances were entered for the respondents and a motion was filed by said Narragansett Electric Lighting Company that the appeal of the said Attleboro Steam & Electric Company should not operate as a stay of the order appealed from. A motion was also filed by said Narragansett Electric Lighting Company that an interim emergency order be entered providing that said appeal should not operate as a stay of said order appealed from pending final hearing upon the above referred to motion, or until further order of the Court. Thereafter by leave of Court a stipulation in regard to said motion of the Narragansett Electric Lighting Company that the appeal should not operate as a stay was filed. Subsequently, on the first day of May A. D. 1925 said appeal was heard,

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- 1264 and upon said first day of May A. D. 1925, said motion of the Narragansett Electric Lighting Company that the appeal should not operate as a stay was also heard. Thereafter on the 18th day of June, A. D. 1925, the Court announced its opinion, and upon the 22d day of July, A. D. 1925, said appeal is disposed of by final decree entered by the Court, as hereinafter fully appears :

STATE OF RHODE ISLAND AND PROVIDENCE
PLANTATIONS

1265

SUPREME COURT

ATTLEBORO STEAM & ELECTRIC COMPANY,
APPELLANT,

v.

PUBLIC UTILITIES COMMISSION and NAR-
RAGANSETT ELECTRIC LIGHTING COM-
PANY,

RESPONDENTS.

**Claim of Appeal Under Public Utilities
Act.**

1266

*To the Honorable the Justices of the Supreme
Court of Rhode Island:*

The Attleboro Steam and Electric Company, a
corporation organized under the laws of the Com-

monwealth of Massachusetts and having its principal place of business in Attleboro in said Commonwealth (hereinafter called "the Attleboro Company") brings this petition against William C. Bliss of East Providence in the County of Providence, Robert F. Rodman of North Kingstown in the County of Washington and Samuel E. Hudson of Woonsocket in said County of Providence, constituting the Public Utilities Commission of Rhode Island (hereinafter called "the Commission") and the Narragansett Electric Lighting Company, a corporation organized under the laws of Rhode Island and having its principal place of business in Providence in said County of Providence (hereinafter called "the Narragansett Company") and respectfully represents that it is aggrieved by the order made by the Commission at the solicitation of the Narragansett Company on January 21, 1925, purporting to adjudge that the rates contained in a certain schedule filed on May 14, 1917, with the Commission by the Narragansett Company entitled R. I. P. U. C. No. 68 (said rates being those specified in a contract dated May 8, 1917, between the Attleboro Company and the Narragansett Company and having been approved by the Commission by an order dated May 23, 1917 and designated as No. 335) are unjust, unreasonable, insufficient and unjustly discriminatory and preferential and otherwise in violation of the Public Utilities Act and that the rates contained in a certain schedule filed on May 7, 1924, with the Commission by the Narragansett Company entitled R. I. P. U. C. No. 125 are just and reasonable and shall be effective with respect to all electricity delivered on and after February 1, 1925, and further represents that said order is unlawful and unreasonable in the following particulars:

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1270 1. The Commission, according to the true construction of the Public Utilities Act, had no jurisdiction to make the order in question.

2. Even if the Commission had jurisdiction to make said order, the same is erroneous in that the public interest is not shown to require that the rate specified in said contract of May 8, 1917, and in said schedule R. I. P. U. C. No. 68 be increased or otherwise modified.

3. The rate fixed by the order now in question is unjust, unreasonable and excessive and is calculated to yield to the Narragansett Company more than a fair return with respect to service rendered to the Attleboro Company.

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4. The rates specified in said contract of May 8, 1917, and in said schedule R. I. P. U. C. No. 68 are not unjust, unreasonable, insufficient, unjustly discriminatory, preferential or otherwise in violation of the Public Utilities Act.

5. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, the act is as applied to the present case repugnant to the Constitution of the United States in that it has the effect of improperly interfering with interstate commerce.

1272 6. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, the act is as applied to the present case repugnant to the Constitution of the United States in that it has the effect of depriving the Attleboro Company of the equal protection of the laws.

7. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, the act is as applied to the present case repugnant to the Constitution of the United States in that it has the effect of depriving the Attleboro Company of its property without due process of law. 1273

8. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, the act is as applied to the present case repugnant to the Constitution of the United States in that it has the effect of impairing the obligation of the contract between the Attleboro Company and the State of Rhode Island implied in the Commission's approval of the rate specified in the above-mentioned contract between the Attleboro Company and the Narragansett Company. 1274

9. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, said order constitutes an improper interference with interstate commerce, so that the same is repugnant to the Constitution of the United States.

10. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, said order has the effect of depriving the Attleboro Company of the equal protection of the laws, so that the same is repugnant to the Constitution of the United States. 1275

11. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, said order has the effect of depriving the Attleboro Company of its property without due

1276 process of law, so that the same is repugnant to the Constitution of the United States.

12. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, said order has the effect of impairing the obligation of the contract between the Attleboro Company and the State of Rhode Island implied in the Commission's approval of the rate specified in the above-mentioned contract between the Attleboro Company and the Narragansett Company, so that the same is repugnant to the Constitution of the United States.

1277 The Attleboro Company is advised that it is neither a "public utility" nor a "complainant" within the meaning of Section 34 of the Public Utilities Act, so that it has under said section no right of appeal from said order, and has therefore filed in this court a petition for a writ of certiorari to quash said order. Desiring, however, to preserve whatever rights it may have in the premises, the Attleboro Company, if it has a right of appeal under said section, hereby and within seven days from the service of said order upon it (the same having been so served on January 27, 1925) exercises such right and prays that said order be reversed.

1278 ATTLEBORO STEAM & ELECTRIC COMPANY,
by its attorneys,

CURTIS, MATTESON, BOSS & LETTS,
STOREY, THORNDIKE, PALMER & DODGE.

[Endorsed on the back of the foregoing claim of appeal.] 1279

M. P. 436. State of Rhode Island and Providence Plantations. Supreme Court. Attleboro Steam & Electric Company, Appellant, v. Public Utilities Commission and Narragansett Electric Lighting Company, Respondents.

Filed Feb. 2, 1925. B. S. Blaisdell, Clerk. Claim of Appeal under Public Utilities Act. Let citation issue returnable February 9, 1925, Citation to Pub. Utilities Com. and Narragansett Electric Lighting Co. Feb. 2, 1925. William H. Sweetland, C. J., for the Court. Curtis, Matteson, Boss & Letts; Storey, Thorndike, Palmer & Dodge.

1925 Filed February 2d and citation issued as ordered reble February 9 at 10 a m. D B Pike asst. ck. Feb. 13 stipulation filed by leave of Court. May 1 heard. May 1 motion of Narragansett Electric Lighting Company that appeal shall not operate as a stay heard. June 18 opinion filed appeal sustained order of the Commission establishing a new rate as per schedule No. 125 reversed and motion of the Narragansett Electric Lighting Company that the appeal shall not act as a stay of the order appealed from denied. July 22 final decree entered.

1280

1281

1282 (L. S.)

THE STATE OF RHODE ISLAND AND PROVIDENCE
PLANTATIONS.

Office of the Clerk of the Supreme Court.

To the Sheriffs of our several Counties, or to their
Deputies, GREETING:

1283

You are hereby required to notify the Public Utilities Commission of the State of Rhode Island and the Narragansett Electric Lighting Company, a corporation organized under the laws of Rhode Island, having its principal place of business in the City of Providence, in the County of Providence in said State, of the filing in this office of a petition on appeal by the Attleboro Steam and Electric Company, a corporation organized under the laws of the Commonwealth of Massachusetts and having its principal place of business in Attleboro in said Commonwealth, praying that the order made by said Commission on January 21, 1925, be quashed and also to cite the said parties to appear before our Supreme Court, at Providence, in the County of Providence, on the ninth day of February, A. D. 1925, at 10 o'clock A. M., that they may then and there show cause, if any they have why the prayer of said petition should not be granted.

Hereof fail not and make true return of this
1284 Writ with your doings thereon.

WITNESS the Seal of our Supreme Court, at Providence, this second day of February, A. D. 1925.

BERTRAM S. BLAISDELL,
Clerk.

PROVIDENCE, SC.

1285

I have this 3rd day of February, 1925, at Providence, in said County, made service of the within Citation by leaving an attested copy of the same in the office of the herein named respondent corporation, the Narragansett Electric Lighting Company, in the hands and possession of a clerk there employed.

I have this 4th day of February, 1925, at Providence, in said County, made service of the within Citation by leaving an attested copy of the same in the hands and possession of each member of the Public Utilities Commission, within my precinct.

Services	\$3.00	1286
Copies	3.00	
Travel40	
— \$6.40		

BENJAMIN F. STEERE,
Deputy Sheriff.

Supreme Court, Feb. 6, A. D. 1925.
M. P. No. 436

ATTLEBORO STEAM & EL. CO.

vs.

PUBLIC UTILITIES COM. et al.

In the above entitled cause it is agreed that the following entry be made: 1287

I hereby enter my appearance for the respondent, Public Utilities Commission.

CHARLES P. SISSON,
Attorney General.

Filed Feb. 6, 1925.

B. S. BLAISDELL,
Clerk.

1288

SUPREME COURT,

STATE OF RHODE ISLAND,
PROVIDENCE PLANTATIONS.

No.

 ATLEBORO STEAM & ELECTRIC COMPANY,
APPELLANT,
vs.

PUBLIC UTILITIES COMMISSION and NARRAGANSETT ELECTRIC LIGHTING COMPANY,

1289

RESPONDENTS.

Motion.

Now comes the respondent Narragansett Electric Lighting Company, by its attorneys, and moves that the appeal of the said Attleboro Steam & Electric Company in the above entitled cause shall not operate as a stay of that certain order of the said Public Utilities Commission from which said appeal is claimed.

Said respondent respectfully represents that justice and equity require that said appeal shall not operate as a stay of said order for the following reasons:

1290

1. As will appear from said appeal the appellant therein, hereinafter called the "Attleboro Company," and this respondent, hereinafter called the "Narragansett Company," on May 8, 1917, entered into a written contract for the sale and deliv-

ery over a period of twenty years of electrical energy by the Narragansett Company to the Attleboro company at a rate specified therein. Said rate was thereafter duly approved by the respondent Public Utilities Commission as a Special Rate by order dated May 23, 1917. 1291

2. At a hearing before said Commission held in April, 1921, it appearing to the satisfaction of said Commission that further operation of said contract would result in a loss to the Narragansett Company and consequently discrimination against its other ^{CONSUMERS AS} customers, by order dated April 27, 1921, said Commission authorized a higher rate schedule for electrical energy to be delivered in the future under said contract, superseding the rate approved by said order of May 23, 1917. 1292

3. By proceedings brought in the District Court of the United States for the District of Rhode Island by said Attleboro Company it was determined by opinion filed February 12, 1924, that said proceedings before said Commission in April, 1921, were not binding upon said Attleboro Company, and accordingly that said Narragansett Company was not entitled to charge and collect the new rates approved therein. Said decision was substantially laid on the ground of technical defects in the proceedings before the Commission and did not amount to a denial of the right of the Narragansett Company to such relief in proper proceedings therefor. 1293

4. Thereafter on May 7, 1924, said Narragansett Company filed with said Commission a new rate schedule proposed to be charged for electrical

- 1294 energy to be furnished under said contract. Thereupon of its own motion said Commission instituted a hearing at which the Attleboro Company appeared by counsel, offered testimony, cross-examined witnesses offered by the Narragansett Company and presented a complete argument of its case. The said Commission by order dated January 1, 1925, found that the existing rates are unjust, unreasonable, insufficient and unjustly discriminatory and preferential and otherwise in violation of the Public Utilities Act and authorized an increase in said rates to the extent provided in said schedule filed May 7, 1924, by said Narragansett Company. In the course of its said order said Commission found expressly that Narragansett
- 1295 Company has been in fact furnishing said service for a long period of time at a substantial loss even without taking into consideration any return on the investment of capital devoted to such service and that the probable future loss under said contract will be much greater. It was provided in and by said order that it should be effective on all electricity delivered on and after February 1, 1925. It is from this order that the present appeal is prosecuted.

5. Principles of equity and justice require under the above circumstances that said Attleboro Company should not be entitled, in the event that its
- 1296 appeal proves unsuccessful, to profit by reason of having prosecuted said appeal to the extent that the effective date of said order should be deferred thereby until such time as this appeal shall have been decided, particularly since the Narragansett Company for a long time has been, and still is,

furnishing electrical energy to the Attleboro Company under said contract at a heavy loss. **1297**

Respectfully submitted,

**NARRAGANSETT ELECTRIC LIGHTING
COMPANY,**

by E. A. BARROWS,
President.

I, EDWIN A. BARROWS, who have signed the foregoing motion in behalf of said Narragansett Electric Lighting Company, being duly sworn on oath depose and say that I have read said motion and know the contents thereof and that the facts therein alleged are true. **1298**

EDWIN A. BARROWS.

Subscribed and sworn to before me this 9th day of February, A. D. 1925.

ARTHUR M. ALLEN,
Notary Public.

HINCKLEY, ALLEN, TILLINGHAST & PHILLIPS,
ARTHUR M. ALLEN,
Attorneys for Narragansett Company.

[Endorsed on the back of the foregoing motion.] **1299**

No. 436 Attleboro Steam & Electric Company,
Appellant, vs. Public Utilities Commission and Narragansett Electric Lighting Company, Respondents.

Filed Feb. 9, 1925, D. B. P., asst. ck.

Hinckley, Allen, Tillinghast & Phillips, Law Offices,
Turks Head Building, Providence, R. I.

1300

SUPREME COURT,
STATE OF RHODE ISLAND
No.

ATTLEBORO STEAM & ELECTRIC COMPANY,
APPELLANT,

vs.

PUBLIC UTILITIES COMMISSION and NARRAGANSETT ELECTRIC LIGHTING COMPANY,

RESPONDENTS.

1301

Motion for Emergency Order

Respectfully represents the Narragansett Electric Lighting Company that it has filed a motion in this cause which has been assigned for hearing to March 2, 1925 praying that the appeal of the said Attleboro Steam & Electric Company in the above entitled cause shall not operate as a stay of that certain order of the said Public Utilities Commission from which said appeal is claimed, reference to which said motion is hereby had.

1302

The Narragansett Electric Lighting Company is advised that under the provisions of Section 35 of the Public Utilities Act of 1912 it is within the power of this Honorable Court to make an order at any time which will prevent said appeal from operating as a stay from February 1, 1925, the date when the Public Utilities Commission ordered that the new rate established by the Public Utilities Commission under their original order should become effective.

Inasmuch, however, as the loss to the Narragansett Company and to its customers would amount to not less than Six Thousand Dollars (\$6,000) per month in case it should be held that an order entered upon March 2, or on some subsequent date, could not relate back to February 1, 1925, and in order to save its rights in the premises, the Narragansett Company respectfully prays that an interim emergency order may be entered by this Court providing that said appeal shall not operate as a stay of said order of the Public Utilities Commission pending the final hearing upon the original motion of said Narragansett Company or until further order of the Court on the ground that justice and equity require that said appeal shall not so operate and for the reasons stated in said original motion.

**NARRAGANSETT ELECTRIC LIGHTING
COMPANY,**

By **E. A. BARROWS,**
President.

I, **EDWIN A. BARROWS**, President of the Narragansett Electric Lighting Company, being duly sworn on oath do depose and say that I have read the said motion and know the contents thereof and that the facts therein alleged are true.

EDWIN A. BARROWS.

1305

Subscribed and sworn to before me this 10th day of February, A. D. 1925.

ARTHUR M. ALLEN.

Notary Public

HINCKLEY, ALLEN, TILLINGHAST & PHILLIPS,

Attorneys for Narragansett Electric
Lighting Company.

1306 [Endorsed on the back of the foregoing motion.]

M. P. 436. Attleboro Steam & Electric Company, Appellant, vs. Public Utilities Commission and Narragansett Electric Lighting Company, Respondents.

Motion for Emergency Order, Filed Feb. 10, 1925, B. S. Blaisdell, Clerk.

Hinckley, Allen, Tillinghast & Phillips, Attorneys for Narragansett Electric Lighting Company.

Hinckley, Allen, Tillinghast & Phillips, Law Offices, Turks Head Building, Providence, R. I.

1307

1308

STATE OF RHODE ISLAND AND PROVIDENCE
PLANTATIONS

1309

SUPREME COURT

ATTLEBORO STEAM & ELECTRIC COMPANY,
APPELLANT,

v.

PUBLIC UTILITIES COMMISSION and NAR-
RAGANSETT ELECTRIC LIGHTING COM-
PANY,

RESPONDENTS.

1310

Stipulation.

The Narragansett Electric Lighting Company having filed a motion praying that the appeal of the Attleboro Steam and Electric Company from the order of the Public Utilities Commission shall not operate as a stay of that order, and the Narragansett Electric Lighting Company having agreed that the hearing upon said motion may be delayed until the hearing upon the merits of the said appeal, it is now stipulated that the said motion if allowed by the Court shall be given the same effect as if argued and an order entered thereon on Friday, February 13, 1925 instead of on the day when it shall actually be argued.

1311

CURTIS, MATTESON, BOSS & LETTS,
ROBERT G. DODGE,
Attorneys for the Appellant.

HINCKLEY, ALLEN, TILLINGHAST &
PHILLIPS,
Attorneys for the Respondent,
Narragansett Electric Lighting Company.

1312 [Endorsed on the back of the foregoing stipulation.]

M. P. 436, Stipulation, Filed by leave of Court,
Feb. 13, 1925, B. S. B., Ck.

SUPREME COURT.

M. P. No. 435.

ATTLEBORO STEAM & ELECTRIC COMPANY

v.

PUBLIC UTILITIES COMMISSION, *et al.*

1313

M. P. No. 436.

ATTLEBORO STEAM & ELECTRIC COMPANY

v.

PUBLIC UTILITIES COMMISSION, *et al.*

Opinion.

STEARNS, J. These are two preceedings, one by certiorari, the other by appeal from an order of the Public Utilities Commission, brought by the Attleboro Steam & Electric Co. (hereinafter Attleboro Co.), Appellant, being in doubt as to the correct procedure, brought the two proceedings; the same question is raised in each.

1314

The Attleboro Co. seeks to have Order No. 876 made by the Public Utilities Commission (hereinafter the Commission) reversed and declared invalid.

The facts, so far as essential to the present inquiry, are as follows: The Attleboro Co. supplies electricity for public and private use in Attleboro,

Mass. The respondent, Narragansett Electric Lighting Co. (hereinafter Narragansett Co.), a Rhode Island corporation, is engaged in a general electric lighting, heating and power business. 1315

May 8, 1917 a contract was made by Narragansett Co., party of the first part, with two Massachusetts corporations, Attleboro Co., party of the second part, and Seekonk Electric Company (hereinafter Seekonk Co.) party of the third part. The Narragansett Co. agreed to sell to the Attleboro Co. for a period of twenty years all the electrical energy used by the Attleboro Co. and supplied to its customers in the city of Attleboro; such electrical energy was to be delivered at the State line between Seekonk, Mass., and East Providence, R. I., and to be metered on the transformers of the Attleboro Co. at its generating plant in Attleboro; the Seekonk Co. agreed to secure the necessary rights of way through Seekonk and build therein a transmission line from the point of delivery at the State line to the boundary line between Seekonk and Attleboro and there connect with the transmission line to be built by the Attleboro Co. to connect with its station in Attleboro. The Narragansett Co. agreed to build the transmission line for the Seekonk Co., the latter to pay therefor, however, only the actual cost of material and labor and such other costs as would be considered assets to capitalize by the Massachusetts Board of Gas and Electric Light Commissioners, the cost to the Seekonk Co. in no event to exceed \$4,500 a mile. A similar provision for construction was made with the Attleboro Co. for its transmission line. The Narragansett Co. agreed to pay annually to each of the companies 15% of the amounts paid by each to the Narragansett Co. for such construction, and in ad- 1316 1317

- 1318 dition to pay the Seekonk Co. annually 15% of any additional expenditures for additions or changes in its lines. The Attleboro Co. agreed to furnish the necessary transformers, &c., at its station to receive the electric current, and the Narragansett Co. agreed to pay the Attleboro Co. \$1750 annually for the operation by the Attleboro Co. of the receiving station. The Narragansett Co. agreed to install and maintain as its property and at its expense, meters on the transformers at the station of the Attleboro Co. to measure and determine the amount of current received and to be paid for by said company. The contract price, 8.57 mills per kilowatt hour as registered by such meters, was to be subject to increase or decrease at the rate of .085 mills per kilowatt hour for every ten cent variation from the base price of \$3.50 per long ton of coal delivered alongside the generating station of the Narragansett Co. on the Providence River. The contract provides for a decrease of price if the electrical energy is produced by cheaper fuel or the cost is less by reason of the use of any subsequent invention or improvement. Any change of federal, state, or municipal laws or regulations, changing any existing taxes or imposts which materially increases or decreases the cost to the Narragansett Co. of generating, or delivering electrical energy, was to be equitably adjusted in the price by the parties.
- 1319
- 1320 The Attleboro Co. agreed to retain and maintain its present generating station and machinery except its present engine driven units, and that the Narragansett Co. at any time at its own expense might use the same for generating and supplying electrical energy to the Attleboro Co.

The Narragansett Co. guaranteed to the Attleboro Co. that the Seekonk Co. would promptly and properly perform its contract obligations and to indemnify the Attleboro Co. for any loss suffered by it because of any breach of the contract by the Seekonk Co. 1321

May 14, 1917, the Narragansett Co. filed with the Commission schedule No. 68, setting out the rate and general terms of the contract, and an application that said rate be approved as a special rate under Sec. 42, Public Utilities Act (C. 795, P. L. 1912). May 23, 1917, the Commission made an order authorizing the Narragansett Co. to grant a special resale rate to the Attleboro Co. at the State line in accordance with schedule No. 68. The parties proceeded to carry out the contract and the Narragansett Co. is still supplying electrical energy to the Attleboro Co. May 7, 1924, the Narragansett Co. filed with the Commission schedule No. 125, setting out a rate for service to the Attleboro Co. materially higher than the rate specified in the contract and schedule No. 68. At the solicitation of the Narragansett Co. the Commission, on its own motion, ordered an investigation and public hearing upon the propriety of the proposed change of rate and directed that notice thereof be given by mail to the two companies. The Attleboro Co. appeared at the hearing and made objection to the jurisdiction of the Commission. This objection was overruled and a hearing was had on the merits of the proposed change. January 21, 1925, the Commission made an order, No. 876, to the effect that the contract rates were insufficient, unjustly discriminatory and in violation of the Public Utilities Act; that the increased rates in schedule No. 125 were just and reasonable and ordered that they 1322 1323

1324 should become effective February 1, 1925. The Attleboro Co. challenges this order and claims it is unlawful and void on various grounds; the principal and decisive objection, in our judgment, is that said order is an improper interference by the State with interstate commerce.

The Attleboro Co. is properly here by appeal. Sec. 34, C. 795, provides that any public utility or any complainant aggrieved by any order of the Commission fixing any rate, *etc.*, may appeal to the Supreme Court for a reversal of such order. The Attleboro Co. is not a "public utility" as that term is used in the act (Sec. 2) nor is it strictly a "complainant" in a technical sense, as the original proceeding was begun by the Commission on its own motion (Sec. 26). The Commission by Sec. 28 is required to give notice to such interested parties as the Commission shall deem necessary, as provided in Sec. 20. This latter section requires the Commission to give to "the public utility and the complainant, if any," ten days' notice of the time and place of the hearing. Sec. 28 provides that after notice is given, the proceedings shall be conducted in like manner as though complaint had been filed with the Commission relative to the matter investigated. Sec. 58 provides that the provisions of the act shall be interpreted and construed liberally in order to accomplish the purposes thereof. One evident purpose of the statute is to subject any order of the Commission whereby any one is legally aggrieved, to review by the Supreme Court. The Attleboro Co. after appearing at the hearing in response to the notice and thereafter taking part in the proceedings, thereby became a complainant within the meaning of the statute and was vested with all the rights of a complainant including, of

course, the right of appeal. See *P. U. Com. v. Prov. Gas Co.*, 42 R. I. 1. 1327

The sale and transportation of electricity generated in one state, and conveyed directly to a purchaser in another state is interstate commerce. It is the essential nature of the service rendered which determines whether commerce is interstate or intrastate; if the actual movement is interstate, it is immaterial that the place of delivery or the place at which title passes, is at the State line. The transportation of the electricity is continuous from this State to its ultimate destination in another state and consequently is interstate commerce. *U. S. v. Union Stock Yard*, 226 U. S. 286; *Penna. R. R. v. Clark Coal Co.*, 238 U. S. 456; *Texas & New Orleans R. R. Co. v. Sabine Tram Co.*, 227 U. S. 111; *United Fuel Gas Co. v. Hallanan*, 257 U. S. 277. 1328

In the recent case (decided May 26, 1924) *Missouri v. Kansas Gas Co.*, 265 U. S. 298, Associate Justice Sutherland, speaking for the court, says the line of division between cases, where, in the absence of congressional action, the State is authorized to act, and those where state action is precluded by mere force of the commerce clause of the Constitution, is not always clearly marked; in the absence of congressional legislation, a State may constitutionally impose taxes and enact laws of internal police generally although they may have an incidental effect upon interstate commerce, but the commerce clause of the Constitution, of its own force, restrains the States from imposing direct burdens upon interstate commerce. The court then quotes with approval the following statement of the law in the *Minnesota Rate Cases*, 230 U. S. 352, 396: "If a state enactment imposes a *direct burden* upon interstate commerce, it must fall re- 1329

1330 gardless of Federal legislation. The point of such an objection is not that Congress has acted, but that the State has directly restrained that which in the absence of Federal regulation should be free."

The *Kansas Natural Gas Co.* was engaged in producing and buying natural gas and transporting, selling and delivering it from Kansas to Missouri in large quantities to independent distributing companies, which then sold and delivered it to local consumers in numerous communities in Kansas and Missouri. The pipe lines were continuous from the wells to place of delivery. The Gas Co. raised its rates in Missouri without the consent and approval of the Public Utilities Commission of that state and in Kansas, notwithstanding a previous order of the Federal Court fixing a lower rate and the action and approval of the Public Utilities Commission approving and fixing such lower rate. Three cases were consolidated for argument in the Supreme Court: No. 155 was a suit in the Federal Court to enjoin the Kansas Gas Co. from increasing its rates in Missouri without the consent of the Public Utilities Commission of that state. An injunction was denied in the lower court. This decision was affirmed. In No. 133 the Kansas Supreme Court issued a mandamus to compel the Gas Co. to re-establish and maintain certain rates in Kansas until otherwise ordered by the Public Utilities Commission. This decision was reversed. No. 137 was a suit in a Federal Court in Kansas to enjoin the collection by the Gas Co. of increased rates in Kansas until allowed by the Kansas Utilities Commission. An injunction was denied in the lower court. The decision was affirmed.

The Supreme Court held that the sale, transportation and delivery were an inseparable part of a transaction fundamentally interstate from beginning to end—not local but essentially national in character—and that enforcement of a selling price in such a transaction placed a direct burden upon such commerce inconsistent with that freedom of interstate trade which it was the purpose of the commerce clause to secure and preserve. The court said (p. 308): “It is as though the Commission stood at the state line and imposed its regulation upon the final step in the process at the moment the interstate commodity entered the State and before it has become a part of the general mass of property therein.” 1333

The attempt of a state to fix the rate was held to be invalid because it imposed a direct burden on interstate commerce; and that this could not be done even though there was an absence of any regulation by congress. 1334

The Narragansett Co. seeks to distinguish the *Kansas Gas Co.* case from the case at bar. It is urged that as it does an extensive local business in this state, if it loses money on its service to appellant it will be compelled to charge the local public higher rates than would otherwise be reasonable; that one of the principal purposes of the Public Utilities Act is to ensure service at reasonable rates to all customers, and, to enable the Commission to effectually carry out this purpose, it is necessary and proper that the State should be permitted to regulate the service to the appellant; that in the *Kansas* case the business of the Gas Co. (with an exception not specified) was a wholesale and wholly interstate; as the principal business of the Narragansett Co. is local, the purpose of the 1335

- 1336 attempted State regulation is not to regulate interstate commerce but to regulate local service, and that any regulation of interstate commerce is only incidental and indirect, is necessary to properly protect local service and should not be held to invalidate the State regulation. The Narragansett Co., to some extent, relies on the authority of *Penna Gas Co. v. Public Service Comm.*, 252 U. S. 23 (decided in 1920). In that case the Natural Gas Co., a Pennsylvania corporation, transported natural gas from the source of supply in Pennsylvania through its pipe line to certain municipalities in the State of New York and there sold the gas directly to numerous local consumers. This was held to be interstate commerce. The service in New York
- 1337 was held to be local service similar to that furnished by any local gas company and not of the character which requires general and uniform regulation of rates by congressional action; that, although the local rates might affect the interstate business of the company, this fact did not prevent the State of New York through its Public Utilities Commission from making local regulations of rates of a reasonable character.

The Pennsylvania case was distinguished and limited in its application by the court in the later *Kansas Gas Co.* case, *supra*. The case at bar we think is like the *Kansas* case. Applying the principles confirmed therein, we think that the action of the State commission imposes a direct burden on interstate commerce and consequently is invalid. The intrastate and interstate business of the Narragansett Co. can be segregated. This separation has actually been made by that company and the Commission, in establishing a basis for the proposed new rate. The effect of the action of the Commission was direct on interstate commerce and in-

1338

cidental on local and State commerce. Such being the case there is no difference in principle because of the amount of interstate commerce involved, whether it is much or little, at wholesale or retail. The purpose of the state action is immaterial, if the result is to impose a direct burden on interstate commerce. 1339

The writ of certiorari is dismissed as the Attleboro Co. has a statutory remedy by appeal.

The appeal is sustained, the order of the Commission establishing a new rate as per schedule No. 125 is reversed.

The motion of the Narragansett Co. that the appeal shall not act as a stay (C. 795, S. 35—now G. L. 1923, C. 253, S. 35) of the order appealed from is denied. 1340

[Endorsed on the back of the foregoing opinion.]

M. P. No. 435. M. P. No. 436. Attleboro Steam & Electric Company v. Public Utilities Commission, et al. Attleboro Steam & Electric Company v. Public Utilities Commission, et al.

Opinion. Filed Jun 18 1925. B. S. Blaisdell, Clerk.

1342

STATE OF RHODE ISLAND AND PROVIDENCE
PLANTATIONS.

SUPREME COURT,

M. P. No. 436

ATTLEBORO STEAM & ELECTRIC COMPANY

v.

PUBLIC UTILITIES COMMISSION, *et al.*

Final Decree.

1343

The appeal of the Attleboro Steam & Electric Company from the order (No. 876) made by the Public Utilities Commission on January 21, 1925, purporting, among other things, to establish certain rates embodied in a schedule designated as R. I. P. U. C. 125, came on to be heard at this sitting and was argued by counsel and thereupon, upon consideration thereof, the court finds that said order is unlawful and invalid for the reasons stated in the opinion, and it is, therefore,

Ordered, adjudged and decreed that said appeal be sustained, that said order be reversed and that the complaint or notice of investigation upon which said order was entered be dismissed and it is further

1344

Ordered, adjudged and decreed that the motion of the Narragansett Electric Lighting Company that the rate specified in said order take effect notwithstanding said appeal be denied.

Entered as the decree of Court this twenty-second day of July A. D. 1925.

By order

BERTRAM S. BLAISDELL,
Clerk.

[Endorsed on the back of the foregoing decree.] 1345

M. P. 436. Attleboro Steam & Electric Company
v. Public Utilities Commission, *et al.*

Final decree, Filed Jul 22, 1925, B. S. Blaisdell,
Clerk.

Curtis, Matteson, Boss & Letts, Attorneys at Law,
415 Woolworth Building, Providence, R. I.

**Certificate of Clerk of Supreme Court of
Rhode Island.**

STATE OF RHODE ISLAND AND PROVIDENCE
PLANTATIONS.

1346

Office of the Clerk of the Supreme Court.

I, BERTRAM S. BLAISDELL, Clerk of the Supreme
Court of said State, do certify that the foregoing
papers are a true transcript of the record in the
matter of the cause entitled M. P. No. 436, Attle-
boro Steam & Electric Company vs. Public Utili-
ties Commission, *et al.* as appear from the files and
records now remaining in this said office of the
Clerk of the Supreme Court.

In Testimony whereof I hereto set my hand and
affix the seal of said Supreme Court, at Providence,
in the County of Providence, in said State, this
eighth day of September, A. D. 1925.

1347

BERTRAM S. BLAISDELL,
Clerk.

[SEAL]

Cost of transcript \$12.60 paid by Narragansett
Electric Lighting Company.

Be careful of maps in
this Book

ie Court,
E D

SEP 16 1925

WM. R. STANSBURY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. **7-217**

27

**PUBLIC UTILITIES COMMISSION OF RHODE ISLAND
AND NARRAGANSETT ELECTRIC LIGHTING
COMPANY,**
Petitioners,

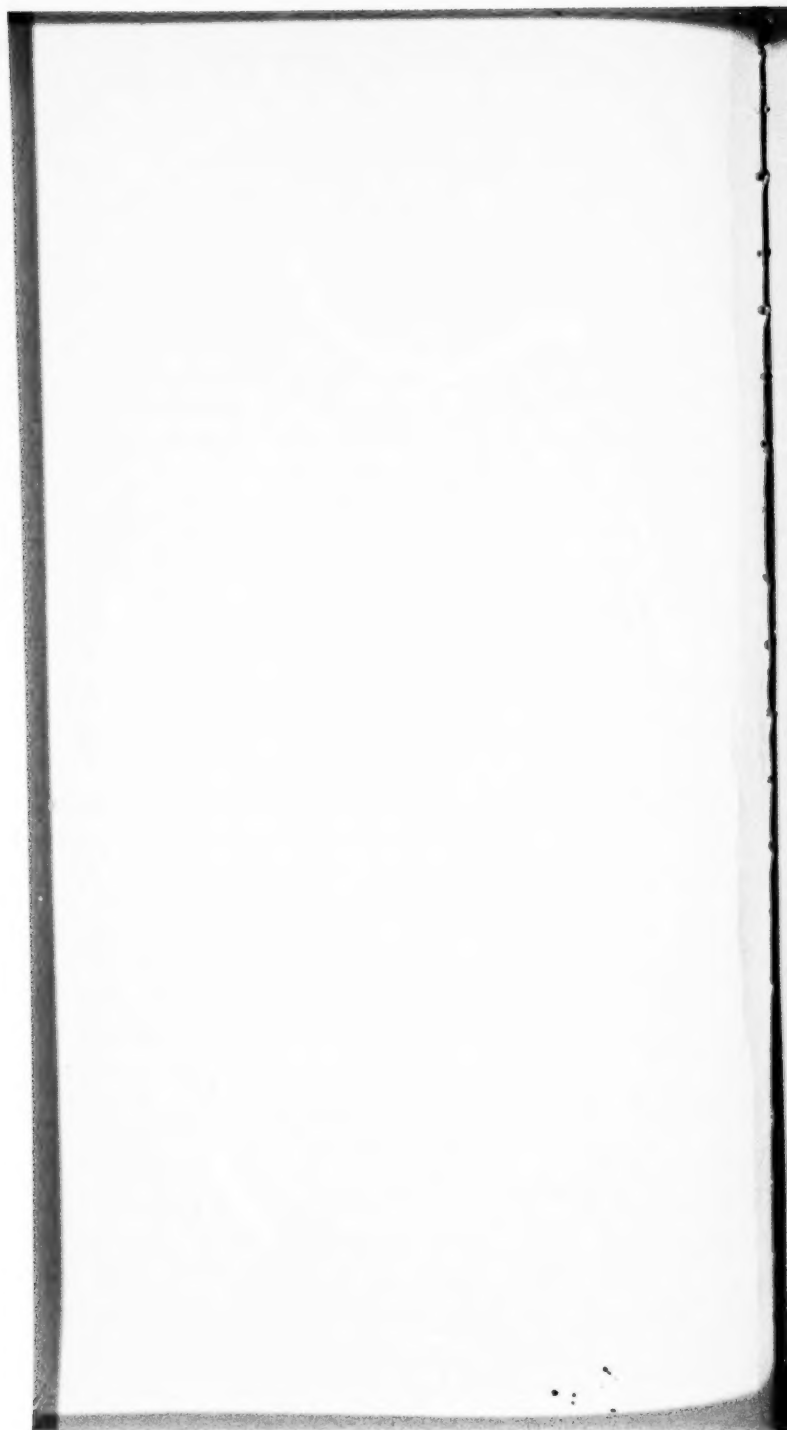
v.

ATTLEBORO STEAM & ELECTRIC COMPANY,
Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF
RHODE ISLAND.**

CHARLES P. SISSON,
Attorney General of the State of Rhode Island,
for PUBLIC UTILITIES COMMISSION OF RHODE ISLAND.

**ROLAND W. BOYDEN,
ARTHUR M. ALLEN,
FRANK D. COMERFORD,**
Counsel for NARRAGANSETT ELECTRIC LIGHTING COMPANY.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No.

PUBLIC UTILITIES COMMISSION OF RHODE ISLAND
AND NARRAGANSETT ELECTRIC LIGHTING
COMPANY, PETITIONERS,

v.

ATTLEBORO STEAM & ELECTRIC COMPANY,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE STATE OF
RHODE ISLAND.

*To the Honorable the Chief Justice and Associate Justices of the
Supreme Court of the United States :*

The petition of Public Utilities Commission of Rhode Island and Narragansett Electric Lighting Company respectfully shows to this Honorable Court as follows :

FIRST. Your petitioner, Public Utilities Commission of Rhode Island, hereinafter called "the Commission" was created by an act known as the Public Utilities Act passed by the General Assembly of the State of Rhode Island in 1912 being Chapter 795 of the Public Laws of Rhode Island of 1912 and Chapter 253 of the General Laws of Rhode Island of 1923. The act provides for hearings and investigations of certain matters by the Commission upon complaint filed with it or in certain cases upon its own motion and Section 21 of said act provides as follows :

"If upon such a hearing and investigation had under the provisions of this chapter, the commission shall find any existing rates, tolls, charges, or joint rate or rates of any

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public utility, to be unjust, unreasonable, insufficient or unjustly discriminatory or to be preferential or otherwise in violation of any of the provisions of this chapter, the commission shall have power to fix and order substituted therefor such rates, tolls, charges, or joint rates as shall be just and reasonable."

SECOND. Your petitioner, Narragansett Electric Lighting Company, hereinafter called "Narragansett Company", is a corporation organized and existing under the laws of the State of Rhode Island and is and for many years has been engaged in generating and delivering electricity in the State of Rhode Island largely for use by consumers within said state and has been granted (and now enjoys) rights, locations and franchises by the State of Rhode Island and the municipalities thereof and has at no time engaged in business outside the State of Rhode Island and has been granted no rights, locations or franchises outside the State of Rhode Island.

THIRD. The respondent, Attleboro Steam & Electric Company, hereinafter called "Attleboro Company", is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and engaged in the business of furnishing electricity to consumers in the City of Attleboro in said Commonwealth and in the vicinity thereof.

FOURTH. In 1917 the Attleboro Company made a contract dated May 8, 1917 (R. 256) with the Narragansett Company by which the Narragansett Company agreed to furnish current to the Attleboro Company at a specified rate, the current being transported by the Narragansett Company to the State line between Rhode Island and Massachusetts and there delivered to the Attleboro Company or to another Massachusetts corporation called the Seekonk Company acting as the agent of the Attleboro Company in transporting the current to Attleboro. This contract contained no provisions for increasing the rate under the circumstances existing and relied upon in this case for such increase. A schedule (R. I. P. U. C. No. 68, R. 275) stating the rate contained in this contract was filed with the Commission and approved by it (R. 390).

FIFTH. As a consequence of economic changes during the war the rate fixed by said contract became unjust, unreasonable, insufficient, unjustly discriminatory and preferential as compared with the rates charged the local consumers of the Narragansett Company in Rhode Island. The performance of the contract at the rate fixed therein was involving the Narragansett Company in a yearly operating loss without any return at all on its investment and it is not denied that if the Narragansett Company had been compelled to continue furnishing electricity to the Attleboro Company at the rate fixed by said contract, the loss from the operation of said contract would have an immediate and direct effect upon the consumers of the Narragansett Company in Rhode Island, and that accordingly the rate fixed by said contract was as against the Rhode Island consumers of the Narragansett Company unjust, unreasonable, insufficient, unjustly discriminatory and preferential. On April 6, 1921, therefore, the Narragansett Company for the purpose of establishing equality among its customers filed with the Commission a new schedule of rates (R. I. P. U. C. No. 101, R. 391) for current furnished to the Attleboro Company. On April 27, 1921, the Commission after an informal hearing at which the Attleboro Company appeared only to protest made an order approving the new schedule (R. 394). The Attleboro Company refused to pay the new rate.

SIXTH. The Attleboro Company in July, 1923, filed a bill in equity in the United States District Court for the District of Rhode Island against the Narragansett Company asking for a mandatory injunction requiring that the latter should continue to furnish current at the contract rate. After a full hearing and argument in October, 1923, the District Court in an opinion by District Judge Brown, filed February 12, 1924 (295 Fed. 895, Dist. Ct. Dist. R. I.), granted the injunction on the ground that the order approving the new rate was not authorized by the statute creating the Commission, Public Laws of 1912 c. 795 (Gen. Laws 1923, c. 253), because there had been no formal finding by the Commission after a formal hearing at which the Attleboro Company had had an opportunity to present its case that the contract rate was unreasonable and ought to be superseded.

SEVENTH. The Narragansett Company thereupon filed with the Commission a new schedule of rates (R. I. P. U. C. No. 125, May 7, 1924, R. 40). This new schedule which in terms cancelled Schedules No. 68 and No. 101 was calculated to give substantially the same return as Schedule No. 101 and to establish equality among the customers of the Narragansett Company but applied to all public utility customers purchasing more than a designated amount and was in other respects so prepared as to meet objections of form that might be made to Schedule No. 101. The Commission acting under Sections 26 to 28 of the statute, upon suggestion of the Narragansett Company ordered on its own motion an investigation of Schedule No. 125 and a public hearing with notice to the Attleboro Company and to the Narragansett Company and also to the general public by publication.

EIGHTH. In June, 1924, a formal public hearing was held. January 21, 1925, the Commission filed its opinion (R. 384) and made an order (R. 420) approving Schedule No. 125. In that opinion the Commission reviews and discusses the evidence at length and in the course thereof makes the following findings:

"The Commission is satisfied that the method used and principles applied in the determination of costs . . . are correct; that upon the evidence before the Commission, it appears that the loss to the Narragansett Company resulting from the supply of electric energy to the Attleboro Company under Schedule #68, including a return of eight per cent. upon that part of its investment used in rendering such service, has been for the years 1918 to 1923, inclusive, as follows:"

(Between \$40,000 and \$60,000 each year; R. 399).

"The Commission further finds upon the evidence, that the aggregate loss to the Narragansett Company from serving the Attleboro Company for the term of the contract under the contract rate and Schedule 68, after a return of 8% on the investment devoted to such Attleboro Company service, will be not less than \$1,500,000.00.

"The evidence further shows and the Commission finds

that the method used and the principles applied in the determination of allocation of plant to the Attleboro service, the receipts from such service, the operating costs thereof, and the net financial results from the service rendered the Attleboro Company, are correct, . . . and that the result of such operation for the year 1923, shows that the Narragansett Company suffered an operating loss of not less than \$4,326.03, without any return whatever upon the investment devoted to such service. It also appears that the probable operating loss during the year 1924 to the Narragansett Company is not less than \$6,881.95, before any return upon investment." (R. 400.)

"The evidence further shows that the estimated annual net losses to the Narragansett Company for service under Schedule #68 after an 8% return on capital, for the remaining years of the contract, are as follows:"

(Between \$50,000 and \$146,000 each year; R. 400, 401.)

"In this particular case it appeared to the Commission at the time the schedule (*i. e.* No. 68) was submitted for approval that the supply of electric energy by the Narragansett Company to the Attleboro Company under the contract and schedule was to the mutual benefit of both companies, offering to the former a large consumer at an average profitable rate during the terms of the contract, and to the latter a dependable supply of energy at a cost which the latter company must have considered lower than its own cost would be under independent operation. The other consumers could also anticipate a lowered cost of production to the Narragansett Company by reason of the increased load upon the central station." (That within parentheses ours.)

"The principal reason for the loss to which the Narragansett Company is subjected with reference to this rate schedule and contract is due to the sudden, substantial and permanent increase in its average unit cost of generating plant, due to the increased costs which have followed the change of conditions resulting from the world war." (R. 402, 403).

IN SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 26, 1925

The petition herein for a writ of certiorari to the Supreme Court of the State of Rhode Island is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(8268)



"The evidence shows that there is no present reason to anticipate any reduction in such unit costs." (R. 404.)

"After a careful consideration of all the evidence the Commission is of the opinion and therefore finds that the rates contained in Schedule R. I. P. U. C. No. 68 are unjust, unreasonable, insufficient and unjustly discriminatory and preferential and otherwise in violation of the provisions of the Public Utilities Act in that the said rates, tolls and charges yield no return on the value of the property used by the Narragansett Company in rendering service to the Attleboro Company, while the rates, tolls and charges charged by the Narragansett Company to its other customers yield a fair return on the value of the property used for such service.

"The Commission further finds that a continuance of service to the Attleboro Company under said schedule No. 68, will be detrimental to the general public welfare, and will prevent the Narragansett Company from performing its full duty towards its other customers." (R. 404.)

"In determining the value of the whole or any part of the investment or property of the Narragansett Company for the purpose of these findings the Commission has considered all relevant facts, including original cost, reproduction cost, money honestly and prudently invested, the par value of securities outstanding, the market value of securities outstanding, the sum required to meet operating expenses, and other facts which are relevant, all of which facts the Commission has, after investigation and hearing and considering all the evidence and arguments of counsel, carefully considered and to each of which it has given due weight.

"The Commission find that under present conditions a return of approximately 8% on the value of the investment devoted to the furnishing of service to the Attleboro Company is a reasonable return, and that considering all the evidence submitted, service by the Narragansett Company under Schedule R. I. P. U. C. No. 125, will yield to the Narragansett Company approximately 8% on the in-

vestment devoted by the Narragansett Company to the furnishing of such service.

"For all of the reasons hereinbefore stated the Commission finds that the rates contained in Schedule R. I. P. U. C. No. 125, are just, reasonable, sufficient and not unjustly discriminatory or preferential or otherwise in violation of any of the provisions of the Public Utilities Act for the reason that such rates, tolls and charges yield a fair return and no more than a fair return on the value of the property used for such service, and that said rates should be substituted for the rates contained in Schedule R. I. P. U. C. No. 68." (R. 419.)

"It is therefore *Ordered* :

"(1) That the rates contained in Schedule R. I. P. U. C. No. 68 of the Narragansett Electric Lighting Company, are unjust, unreasonable, insufficient and unjustly discriminatory and preferential and otherwise in violation of the Public Utilities Act, and

"(2) That the rates contained in Schedule R. I. P. U. C. No. 125 of the Narragansett Electric Lighting Company are just and reasonable, and may be allowed to become effective on all electricity delivered on and after February 1, 1925." (R. 420.)

NINTH. The Attleboro Company thereupon filed in the Supreme Court of the State of Rhode Island being the highest court of said State in which a decision could be had, a claim of appeal under Section 34 of the statute creating the Commission for a reversal of the order of the Commission and also a petition for a writ of certiorari alleging doubt as to whether it had the right to appeal. By the claim of appeal of the Attleboro Company there was drawn in question the validity of said Public Utilities Act as well as also the validity of said order of the Commission made and entered pursuant to the provisions of said Act on the ground of such statute and/or order being repugnant to the Constitution of the United States. This is indicated by the fact that among the particulars relied upon by the Attleboro Company in its claim of appeal are the following (R. 424) :

"5. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, the act is as applied to the present case repugnant to the Constitution of the United States in that it has the effect of improperly interfering with interstate commerce.

"6. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, the act is as applied to the present case repugnant to the Constitution of the United States in that it has the effect of depriving the Attleboro Company of the equal protection of the laws.

"7. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, the act is as applied to the present case repugnant to the Constitution of the United States in that it has the effect of depriving the Attleboro Company of its property without due process of law.

"8. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, the act is as applied to the present case repugnant to the Constitution of the United States in that it has the effect of impairing the obligation of the contract between the Attleboro Company and the State of Rhode Island implied in the Commission's approval of the rate specified in the above-mentioned contract between the Attleboro Company and the Narragansett Company.

"9. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, said order constitutes an improper interference with interstate commerce, so that the same is repugnant to the Constitution of the United States.

"10. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, said order has the effect of depriving the Attleboro Company of the equal protection of the laws, so that the same is repugnant to the Constitution of the United States.

"11. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question,

said order has the effect of depriving the Attleboro Company of its property without due process of law, so that the same is repugnant to the Constitution of the United States.

"12. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, said order has the effect of impairing the obligation of the contract between the Attleboro Company and the State of Rhode Island implied in the Commission's approval of the rate specified in the above-mentioned contract between the Attleboro Company and the Narragansett Company, so that the same is repugnant to the Constitution of the United States."

By the foregoing language contained in the claim of appeal it also appears that the Attleboro Company does especially set up and claim a title, right, privilege or immunity under the Constitution of the United States.

TENTH. The matter was heard by the Supreme Court of Rhode Island and the Supreme Court on June 18, 1925, rendered its opinion dismissing the writ of certiorari but sustaining the appeal of the Attleboro Company, and reversing the order of the Commission establishing the new rate set forth in Schedule No. 125, stating as the reason for its decision that the order of the Commission was an improper interference by the State with interstate commerce (R. 438). The relevant language of the opinion and that which indicates the reason for the Court's decision is as follows:

"The Attleboro Company challenges this order and claims it is unlawful and void on various grounds; the principal and decisive objection, in our judgment, is that said order is an improper interference by the State with interstate commerce."

And in referring to the case of *Missouri v. Kansas Gas Company* 265 U. S. 298 the court said in concluding its opinion:

"Applying the principles confirmed therein, we think that the action of the State commission imposes a direct

burden on interstate commerce and consequently is invalid. The intrastate and interstate business of the Narragansett Co. can be segregated. This separation has actually been made by that company and the Commission, in establishing a basis for the proposed new rate. The effect of the action of the Commission was direct on interstate commerce and incidental on local and State commerce. Such being the case there is no difference in principle because of the amount of interstate commerce involved, whether it is much or little, at wholesale or retail. The purpose of the state action is immaterial, if the result is to impose a direct burden on interstate commerce."

A final decree of said court sustaining said appeal and reversing said order on the grounds stated in said opinion was entered on July 22, 1925, and the title, right, privilege or immunity specially set up and claimed by the Attleboro Company was recognized and the Federal claim of the Attleboro Company was sustained.

ELEVENTH. Your petitioners are advised that said decision of the Supreme Court of Rhode Island is erroneous in holding that the order of said Commission was an improper interference by the State with interstate commerce and in refusing to recognize that the chief business of the Narragansett Company is its local business in Rhode Island and that the purpose of the regulation of the rates on the whole business of the company is not to regulate interstate commerce but to regulate the local public service, and that any incidental effect of such regulation upon interstate commerce is a necessary incident to the carrying out of such local public service regulations, and also in refusing to recognize that the Narragansett Company, a corporation created and existing under and by virtue of the laws of the State of Rhode Island is doing business exclusively in the State of Rhode Island and enjoying only the rights, locations and franchises granted to it by the State of Rhode Island and by the municipalities thereof.

Your petitioners are further advised that said Supreme Court of the State of Rhode Island has in deciding said case decided

a federal question of substance not theretofore determined by this Honorable Court and has decided it in a way probably not in accord with any decisions of this Court, which might be deemed applicable to the situation under consideration.

Wherefore your petitioners pray that a writ of certiorari may be issued out of and under the seal of this Honorable Court directed to the Supreme Court of the State of Rhode Island commanding said Court to certify and send to this Court a full and complete transcript of the record and all proceedings of said Court in the cause entitled "Attleboro Steam & Electric Company *v.* Public Utilities Commission, et al", being shown and designated in the indices and records of said Court as M. P. No. 436, to the end that the said cause may be reviewed and determined by this Court as provided by law, and your petitioners pray that the judgment of said Supreme Court of Rhode Island in the said cause may be reversed by this Honorable Court.

And your petitioners will ever pray.

PUBLIC UTILITIES COMMISSION OF RHODE ISLAND,

By CHARLES P. SISSON,

Attorney General of the State of Rhode Island.

NARRAGANSETT ELECTRIC LIGHTING COMPANY,

By ROLAND W. BOYDEN,

ARTHUR M. ALLEN,

FRANK D. COMERFORD,

Counsel.

STATE OF RHODE ISLAND,
COUNTY OF PROVIDENCE, SS.

Arthur M. Allen, being duly sworn, says that he is counsel for the petitioner, Narragansett Electric Lighting Company, that he prepared the foregoing petition, and that the allegations thereof are true as he verily believes.

ARTHUR M. ALLEN.

Sworn to and subscribed before me this
15th day of September, A. D. 1925.

CAROLINE L. MEYER,
Notary Public.

My commission expires
June 30, 1926.

FILED

SEP 18 1925

WM. R. STANBURY

CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. **7-217**

PUBLIC UTILITIES COMMISSION OF RHODE ISLAND
AND NARRAGANSETT ELECTRIC LIGHTING
COMPANY,

Petitioners,

v.

ATTLEBORO STEAM & ELECTRIC COMPANY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF RHODE ISLAND.

BRIEF IN SUPPORT OF PETITION.

CHARLES P. SISSON,

Attorney General of the State of Rhode Island,
for PUBLIC UTILITIES COMMISSION OF RHODE ISLAND.

ROLAND W. BOYDEN,

ARTHUR M. ALLEN,

FRANK D. COMERFORD,

Counsel for NARRAGANSETT ELECTRIC LIGHTING COMPANY.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No.

PUBLIC UTILITIES COMMISSION OF RHODE ISLAND
AND NARRAGANSETT ELECTRIC LIGHTING
COMPANY, PETITIONERS,

v.

ATTLEBORO STEAM & ELECTRIC COMPANY,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF RHODE ISLAND.

BRIEF IN SUPPORT OF PETITION.

STATEMENT OF GROUNDS FOR CERTIORARI.

1.

A final decree (R. 448) of the Supreme Court of the State of Rhode Island, being the highest court of said state in which a decision could be had, was entered on July 22, 1925 (R. 422), in the cause now sought to be certified for review and determination. The opinion in the court below (R. 438) was filed June 18, 1925 (R. 422).

2.

The following specific claims advanced by the Attleboro Steam & Electric Company in the lower court in its claim of appeal from the order of the Public Utilities Commission of Rhode Island are relied upon as the basis of this Court's jurisdiction (R. 424):

"5. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, the act

is as applied to the present case repugnant to the Constitution of the United States in that it has the effect of improperly interfering with interstate commerce.

" 6. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, the act is as applied to the present case repugnant to the Constitution of the United States in that it has the effect of depriving the Attleboro Company of the equal protection of the laws.

" 7. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, the act is as applied to the present case repugnant to the Constitution of the United States in that it has the effect of depriving the Attleboro Company of its property without due process of law.

" 8. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, the act is as applied to the present case repugnant to the Constitution of the United States in that it has the effect of impairing the obligation of the contract between the Attleboro Company and the State of Rhode Island implied in the Commission's approval of the rate specified in the above-mentioned contract between the Attleboro Company and the Narragansett Company.

" 9. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, said order constitutes an improper interference with interstate commerce, so that the same is repugnant to the Constitution of the United States.

" 10. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, said order has the effect of depriving the Attleboro Company of the equal protection of the laws, so that the same is repugnant to the Constitution of the United States.

" 11. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, said order has the effect of depriving the Attleboro Company of

its property without due process of law, so that the same is repugnant to the Constitution of the United States.

" 12. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, said order has the effect of impairing the obligation of the contract between the Attleboro Company and the State of Rhode Island implied in the Commission's approval of the rate specified in the above-mentioned contract between the Attleboro Company and the Narragansett Company, so that the same is repugnant to the Constitution of the United States."

The following rulings in the lower court are relied upon as the basis of this Court's jurisdiction:

" . . . the Court finds that said order is unlawful and invalid for the reasons stated in the opinion, and it is, therefore

Ordered, adjudged and decreed that said appeal be sustained, that said order be reversed and that the complaint or notice of investigation upon which said order was entered be dismissed. . . ." (R. 448.)

In the opinion it was stated (and these were the sole grounds advanced for the decision):

" . . . The Attleboro Co. challenges this order, and claims it is unlawful and void on various grounds; the principal and decisive objection, in our judgment, is that said order is an improper interference by the State with interstate commerce." (R. 442.)

" . . . The case at bar we think is like the Kansas case (referring to *Missouri v. Kansas Gas Co.*, 265 U. S. 298). Applying the principles confirmed therein, we think that the action of the State commission imposes a direct burden on interstate commerce and consequently is invalid. The intrastate and interstate business of the Narragansett Co. can be segregated. This separation has actually been made by that company and the Commission, in establishing a basis for the proposed new rate. The effect of the action

of the Commission was direct on interstate commerce and incidental on local and State commerce. Such being the case there is no difference in principle because of the amount of interstate commerce involved, whether it is much or little, at wholesale or retail. The purpose of the state action is immaterial, if the result is to impose a direct burden on interstate commerce." (R. 446.)

3.

The statutory provisions under which jurisdiction for a writ of certiorari is invoked are found in Section 237 (b) of the Judicial Code as amended by Act of February 13, 1925, as follows:

"It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had . . . where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution . . . of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution . . . of . . . the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. . . ."

Your petitioners rely upon both grounds for sustaining jurisdiction, viz.:

(a) That there was drawn in question the validity of a statute of the State of Rhode Island on the ground of its being repugnant to the Constitution of the United States, and

(b) That a right, privilege, or immunity was specially set up or claimed by the Attleboro Steam & Electric Company.

4.

(a)

The following cases are believed to sustain jurisdiction for the reason that there was drawn in question *the validity of a statute* of a State on the ground of its being repugnant to the Constitution of the United States:

Red Cross Line v. Atlantic Fruit Company, 264 U. S. 109, 120.

Dahnke-Walker Co. v. Bondurant, 257 U. S. 282, 289.

Atlantic Coast Line v. North Carolina Corporation Commission, 206 U. S. 1, 6.

Grand Trunk Ry. v. R. R. Commission of Indiana, 221 U. S. 400, 403 and cases cited.

Reinman v. Little Rock, 237 U. S. 171, 176.

Chicago, Milwaukee & St. Paul Ry. v. State Public Utilities Commission of Illinois, 242 U. S. 333.

Red Cross Line v. Atlantic Fruit Company is parallel to the instant case. Jurisdiction by certiorari was there upheld after the State court of last resort had decided that a State Arbitration Law excluded maritime contracts from its operation because the Federal Constitution so required. In that case, as in our present case, the state court held that the state statute was not applicable, not because the contract in question was not within the scope of the state statute as a matter of statutory construction, but because of the constitutional question involved. The following language from the opinion is in point:

"If that court (the New York Court of Appeals) had construed the Arbitration Law as excluding from its scope controversies which are within the admiralty jurisdiction, the construction given to the state statute would bind us; and there would be no occasion to consider the constitutional question presented. . . . An expression used by the Court of Appeals lends some color to respondent's contention, 233 N. Y. 373, 381. But a reading of the whole opinion shows that the state court excluded maritime contracts from the operation of the law, not as a matter of statutory

construction, but because it thought the Federal Constitution required such action. . . ."

In *Dahnke-Walker v. Bondurant* the State Court denied the Federal claim on the ground that the State statute as applied to a particular transaction was not, as the plaintiff seasonably insisted, repugnant to the commerce clause. On writ of error jurisdiction was challenged. Jurisdiction was sustained under the following clause of the Judicial Code, Sec. 237, as amended by Act of September 6, 1916 (39 Stat. 726):

"... any suit . . . where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity."

In that case it was a necessary fact that the decision in the State Court was in favor of the validity of the State statute only for the purpose of sustaining the jurisdiction in error. That aspect of the case does not concern us here because the power to review by certiorari may be exercised as well where the Federal claim is sustained as where it is denied. Judicial Code, Sec. 237 (b), *supra*. The fact decisive of jurisdiction in that case as in the instant case is that the validity of the State statute as applied in a particular transaction was drawn in question under the Constitution of the United States (*ante* pp. 1-3).

The Public Utilities Act of Rhode Island and particularly Section 21 of that Act (Appendix A, p. 42) is the statute the validity of which is herein drawn in question. But the jurisdiction may also be predicated upon the proposition that the order of the Commission was a statute within the meaning of Judicial Code, Sec. 237 (b), *supra*, and it cannot be denied that an order of the Commission was drawn in question on the ground of its being repugnant to the Constitution of the United States. The remaining cases cited above to sustain jurisdiction for the reason that the validity of a statute was drawn in question are relied upon only in support of the proposition that the order of the Commission was a statute within the meaning of Judicial Code, Sec. 237 (b).

(b)

The following cases tend to support jurisdiction for the reason that a *right, privilege or immunity* was specially set up or claimed under the Constitution of the United States:

Citizens National Bank v. Durr, 257 U. S. 99, 106-7;
Bullock v. R. R. Comm. of Florida, 254 U. S. 513, 518.

Satisfactory cases in support of jurisdiction by certiorari under the title, right, privilege or immunity clause of Section 237 (b) of the Judicial Code are not to be found because the reasons for granting or denying petitions for such writs are seldom given in the reports. Inasmuch as review by certiorari is not a matter of right but of sound judicial discretion there is ordinarily no occasion for the Court to discuss the question of jurisdiction unless the jurisdiction is challenged after the petition has been granted. *Citizens National Bank v. Durr* and *Bullock v. R. R. Comm. of Florida* were exceptional cases where writs of error were denied because the validity of state statutes were not drawn in question and writs of certiorari granted because a Federal claim of right, privilege or immunity was denied by the State Court.

On the question of jurisdiction it is important that the case was decided below on the Federal question. The fact that non-Federal grounds were included in the claim of appeal does not afford a basis for depriving this Court of jurisdiction.

St. Louis, Iron Mountain & Southern Ry. v. McWhirter, 229 U. S. 265, 276.

The special reasons relied upon to show that the state court has decided a Federal question of substance not theretofore determined by this Court and has decided it in a way not in accord with applicable decisions of this Court will be hereinafter set forth in a concise statement of the case followed by an argument on the principles of law applicable to a decision of the Federal question.

STATEMENT OF THE CASE.

The Narragansett Electric Lighting Company (hereinafter the "Narragansett Company") was incorporated by a special act of the General Assembly of the State of Rhode Island passed May 29, 1884. (Laws of Rhode Island 1884, p. 29.) It has for forty years been engaged in a general electric lighting, heating and power business. By the act of incorporation and subsequent amendments thereto the State of Rhode Island has conferred upon the Narragansett Company certain special rights, locations and franchises and has authorized town and city councils within Rhode Island to grant corresponding rights, locations and franchises within their respective territorial limits. See, for example, the rights of eminent domain conferred by the amendatory Act of April 19, 1917. (Laws of Rhode Island, 1917, p. 341; Appendix B, pp. 46-49.) By an Act of April 29, 1918 (Public Laws of Rhode Island, 1918, p. 253), the Narragansett Company was authorized to acquire by lease, purchase or otherwise, the ownership or control of any right, property or franchise held by any person, corporation or association engaged in or authorized to engage in a business similar to that of the Narragansett Company and was authorized to give its securities in payment therefor. Many of the above-mentioned state and municipal grants of rights, locations and franchises have been given subject to regulation by general law or by order of city or town council as the case may be. In addition to the limitations by way of potential regulation attached to these specially granted rights, locations and franchises the Narragansett Company is subject to other limitations peculiar to general Rhode Island public utility corporations which exist by reason of the devotion by the company of its private property to public use within the State of Rhode Island. (Public Utilities Act of Rhode Island, General Laws of Rhode Island, 1923, Chapter 253; Appendix A, p. 39.) The Narragansett Company in 1923 supplied electrical current direct to 71,554 customers (R. 284, 287) within Rhode Island.

Attleboro Steam & Electric Company (hereinafter the "Attleboro Company") is a corporation organized and existing

under the laws of the Commonwealth of Massachusetts. It supplies electrical current for public and private use in the City of Attleboro and vicinity in Massachusetts.

Seekonk Electric Company (hereinafter the "Seekonk Company") is a corporation organized and existing under the laws of the Commonwealth of Massachusetts.

Public Utilities Commission of Rhode Island (hereinafter the "Commission") was created by an Act known as the Public Utilities Act passed by the General Assembly of the State of Rhode Island in 1912, being Chapter 253 of the General Laws of Rhode Island of 1923. (Relevant sections of that Act are set out in Appendix A of this brief, pp. 39-45.)

Early in the year 1916 negotiations were entered into between the Attleboro Company and the Narragansett Company looking to the sale by the Narragansett Company and the purchase by the Attleboro Company of electrical energy for a period of twenty years. These negotiations culminated in a triparty contract (R. 256-274) dated May 8, 1917, between the Narragansett Company, the Attleboro Company and the Seekonk Company, whereby the Attleboro Company was to purchase all the electricity required for its own uses and for sale in the City of Attleboro and adjacent territory from the Narragansett Company at a specified rate for a period of twenty years. The current was to be delivered at the State Line between the Town of East Providence, Rhode Island, and the Town of Seekonk, Massachusetts, and was to be metered on the transformers of the Attleboro Company at its generating plant in Attleboro. (R. 257-258.) The Narragansett Company then had and continues to have a sub-station at East Providence.

At no time either before or after the contract was entered into has the Narragansett Company qualified to do business in the Commonwealth of Massachusetts. It is not now and never has been engaged in business therein. Since its incorporation the Narragansett Company has been continuously engaged in a general electric lighting, heating and power business. Its generating plant is located at tide-water in the city of Providence, Rhode Island. It generates its electrical energy by steam

through the use of coal and oil as fuel. The chief business of the Narragansett Company is to supply electricity directly to customers in Rhode Island. About one thirty-fifth (1/35) of the total product of the Narragansett Company went to the Attleboro Company in 1923. (R. 87.) The Narragansett Company had 31,375 customers in 1917 and 71,554 in 1923. (R. 287.)

The contract rate was 8.57 cents per kilowatt hour. This rate was to be subject to increase or decrease for certain variations from a base price for coal. It was subject to decrease if any discovery, invention or improvement in electrical machinery should be made or any other method of generating or obtaining electrical energy should be discovered or adopted which would cause a material reduction in the cost of supplying electrical energy. Equitable adjustments were to be made when taxes imposed or removed materially increased or decreased the cost to the Narragansett Company of generating or otherwise obtaining or delivering electrical energy. The contract contained no provision for increasing the rate other than that which might result from an increase in the price of coal or from an apportionment of taxes.

The Narragansett Company on May 14, 1917, filed with the Commission its rate schedule R. I. P. U. C. No. 68 (R. 275), which stated the contract rate to the Attleboro Company, and requested the Commission to allow the contract to go into effect at once. By order No. 335, dated May 23, 1917 (R. 390), the Commission authorized the Narragansett Company to grant the special resale rate, shown in schedule R. I. P. U. C. No. 68, to the Attleboro Company.

As a consequence of economic changes wrought by the world war the contract became extremely burdensome to the Narragansett Company involving it in a yearly operating loss without any return whatever upon its investment. (R. 403.)

April 6, 1921, the Narragansett Company filed with the Commission schedule R. I. P. U. C. No. 101 (R. 391-393) which contained a new schedule of special rates for current furnished to the Attleboro Company. On April 27, 1921, the Commission, after a hearing, at which the Attleboro Company appeared only

to protest, made an order approving the new schedule. (Order No. 584; R. 395.)

The Attleboro Company refused to pay the new rate. The Narragansett Company threatened to cut off the current unless the new rate was paid. In July, 1923, the Attleboro Company filed a bill in equity in the United States District Court for the District of Rhode Island against the Narragansett Company, asking for a mandatory injunction that the latter should continue to furnish current at the contract rate. After a full hearing and argument in October, 1923, the District Court, in an opinion by Judge Brown, filed February 12, 1924 (*Attleboro Steam & Electric Co. v. Narragansett Electric Lighting Co.*, 295 Fed. 895; R. 1-22), granted the injunction, on the ground that the order approving the new rate was not authorized by the statute creating the Commission (Public Laws of Rhode Island 1912, c. 795; Gen. Laws, R. I. 1923, c. 253), because there had been no formal finding by the Commission, after a formal hearing at which the Attleboro Company had an opportunity to present its case, that the contract rate was unreasonable and ought to be superseded.

The Narragansett Company thereupon filed with the Commission a new schedule of rates. (Schedule R. I. P. U. C. No. 125, May 7, 1924; R. 251-252.) This new schedule of rates which in terms cancelled Schedules No. 98 (R. 274-276) and No. 101 (R. 391-393) was calculated to give substantially the same return as Schedule No. 101, but applied to all public utility customers purchasing more than a designated amount of current, and was in other respects amended and made more definite in order to meet objections of form that might be made to Schedule No. 101. The Commission, acting under Secs. 26-28 of the Public Utilities Act (see Appendix A, p. 42) upon suggestion of the Narragansett Company, ordered of its own motion in investigation of Schedule R. I. P. U. C. No. 125, at a public hearing, with notice by mail to the Narragansett Company and the Attleboro Company and by publication to the general public. (R. 27-35.)

In June, 1924, a formal public hearing was held. Counsel appeared for the Narragansett Company and for the Attleboro

Company. Testimony was taken and arguments made in behalf of both companies. (R. 47-187; 188-222. See also Exhibits, R. 223-345.)

January 21, 1925, the Commission filed its opinion (R. 384-420) and made an order (No. 876; R. 420) that the rates contained in Schedule R. I. P. U. C. No. 68 were unjustly discriminatory and in violation of the Public Utilities Act, that the rates contained in Schedule R. I. P. U. C. No. 125 were just and reasonable and were allowed to become effective on all electricity delivered on and after February 1, 1925.

The Commission in its opinion (R. 384-420) recited and discussed the evidence at length and made findings which may be summarized as follows:

1. At the time the contract was submitted to the Commission for approval in 1917 it appeared to the Commission that the contract would result to the mutual benefit of both companies. (R. 402.)

2. The Narragansett Company suffered in 1923 an operating loss of not less than \$4,326.03 without any return whatever upon the investment devoted to the Attleboro service and the probable operating loss in 1924 was \$6,881.95 before any return upon investment. (R. 400.)

3. The aggregate loss to the Narragansett Company from serving the Attleboro Company for the term of the contract at the contract rates (Schedule No. 68) after a return of 8 per cent on the investment devoted to such Attleboro Company service, will not be less than \$1,500,000. (R. 400).

4. The principal reason for the loss to the Narragansett Company under the contract is due to the sudden, substantial and permanent increase in the average unit cost of generating plant due to the increased costs which have followed the change of conditions resulting from the world war. (R. 403.)

5. The rates contained in Schedule No. 68 (the contract rates) are unjust, unreasonable, insufficient and unjustly discriminatory and preferential and otherwise in violation of the Public Utilities Act of Rhode Island because they yield no return on the value of the property used by the Narragansett Company in rendering service to the Attleboro Company, while

the rates, tolls and charges made by the Narragansett Company to its other customers yield a fair return on the value of the property used for such service. (R. 404.)

6. A continuance of service to the Attleboro Company under Schedule No. 68 will be detrimental to the general public welfare, and will prevent the Narragansett Company from performing its full duty towards its other customers. (R. 404.)

7. Under present conditions a return of approximately 8 per cent on the value of the investment devoted to the furnishing of service to the Attleboro Company is a reasonable return. (R. 419.)

8. Service by the Narragansett Company to the Attleboro Company under Schedule No. 125 will yield to the Narragansett Company approximately 8 per cent on the investment devoted by the Narragansett Company to the furnishing of such service. (R. 419.)

9. The rates contained in Schedule No. 125 are just, reasonable, sufficient and not unjustly discriminatory or preferential or otherwise in violation of any of the provisions of the Public Utilities Act of Rhode Island for the reason that such rates, tolls and charges yield a fair return and no more than a fair return on the value of the property used for such service. (R. 419.)

10. The rates contained in Schedule No. 125 should be substituted for the rates contained in Schedule No. 68. (R. 419.)

The Commission made the following statement of the method used by it in determining value of investment, upon the basis of which the above findings were made (R. 419):

“ In determining the value of the whole or any part of the investment or property of the Narragansett Company for the purpose of these findings the Commission has considered all relevant facts, including original cost, reproduction cost, money honestly and prudently invested, the par value of securities outstanding, the market value of securities outstanding, the sum required to meet operating expenses, and all other facts which are relevant, all of which facts the Commission has after investigation and

hearing and considering all the evidence and arguments of counsel, carefully considered and to each of which it has given due weight."

The Attleboro Company prosecuted an appeal to the Supreme Court of Rhode Island from Order No. 876 (R. 420) of the Commission, challenging the order and claiming it to be unlawful and void on various grounds including the eight Federal grounds above quoted (pp. 1-3.).

On June 18, 1925, an opinion was handed down by Judge Stearns and a final decree was entered July 22, 1925 (Rec. 448), by the Supreme Court of Rhode Island reversing Order No. 876 of the Commission establishing a new rate as per Schedule No. 125 and sustained the appeal. The single ground for the decision was that Order No. 876 imposed a direct burden on interstate commerce and so constituted an improper interference by the State with interstate commerce upon authority of *Missouri v. Kansas Gas Co.*, 265 U. S. 298.

SPECIFICATION OF ASSIGNED ERRORS.

1. Ruling that Order No. 876 was an improper interference by the State with interstate commerce.
2. Refusal to recognize that the chief business of the Narragansett Company is its local business in Rhode Island.
3. Refusal to recognize that only a small fraction of the total product of the Narragansett Company is sold to the Attleboro Company and that a very much greater proportion of the total product is sold direct by the Narragansett Company to consumers in Rhode Island.
4. Refusal to recognize that the Narragansett Company does no business outside of Rhode Island, that it delivers no electricity outside of Rhode Island, and that only a small proportion of the total product of the Narragansett Company is ultimately used in Massachusetts.
5. Failure to give recognition to the findings of the Commission that
 - (a) The rates, tolls and charges made by the Narragansett Company to its other customers yield a fair return on the value of the property used for such other service.

(b) The contract rate was unjust, unreasonable, insufficient and unjustly discriminatory and preferential and otherwise in violation of the Public Utilities Act of Rhode Island.

(c) A continuance of service to the Attleboro Company under the contract rate will be detrimental to the general public welfare and will prevent the Narragansett Company from performing its full duty towards its other customers.

(d) The rates contained in schedule No. 125 will yield a fair return and no more than a fair return on the value of the property used for the Attleboro service during the period of the contract.

(e) The rates contained in schedule No. 125 are just, reasonable, sufficient and not unjustly discriminatory or preferential or otherwise in violation of any of the provisions of the Public Utilities Act of Rhode Island.

(f) The rates contained in schedule No. 125 should be substituted for the rates contained in schedule No. 68.

6. Failure to give recognition to the fact that the Narragansett Company is operating under rights, locations and franchises from the State of Rhode Island and the municipalities thereof and to the fact that the Narragansett Company has at no time engaged in business outside the State of Rhode Island and has not been granted and has not enjoyed rights, locations or franchises outside the State of Rhode Island.

7. Refusal to recognize that the Attleboro Company in making the contract was chargeable with knowledge of the limited contractual powers of the Narragansett Company and that the latter company was subject to continuous regulation by the Commission in the interest of the public welfare of the State of Rhode Island in the absence of assertion by Congress of its paramount power to regulate interstate commerce.

8. Refusal to recognize that order No. 876 is a regulation of local public service, that any incidental effect of such regulation upon interstate commerce was a necessary incident to the carrying out of such local public service regulation and consequently only an indirect burden on interstate commerce.

9. Refusal to recognize that the paramount interest is not national but local.

10. Refusal to recognize that this is not a case where equality of opportunity and treatment among the various communities and between the States concerned would be preserved by uniformity of governmental non-action but a case where the State should be free to prevent discrimination in a business essentially local.

ARGUMENT.

The argument will be presented under the following principal headings:

I. The order of the Commission does not constitute an improper interference by the State with interstate commerce.

II. The charter power of the Narragansett Company to contract with respect to rates was subject to and limited by the power of the Commission to fix reasonable rates and to substitute reasonable rates for unreasonable rates.

III. The contract rate here involved was peculiarly subject to regulation by the Commission because it constituted a sale price at the State Line as distinguished from a transportation rate in interstate commerce.

IV. All contracts made by Public Utilities with respect to rates are subject to regulation by the State in the exercise of its Police Power.

V. The contract rate is unjust and unreasonable and the Commission properly displaced that rate and substituted the new rate, which is just and reasonable.

VI. There is no question as to the jurisdiction of the Commission to make the order.

I.

The order of the Commission does not constitute an improper interference by the State with interstate commerce.

We concede that the sale of electric current by the Narragansett Company to the Attleboro Company is interstate commerce. The fact that the current is delivered by the Narragansett Company within the State of Rhode Island does not prevent the whole transaction from being interstate commerce.

Pennsylvania R. R. Co. v. Clark Coal Co., 238 U. S. 456, 465;

United Fuel Gas Co. v. Hallanan, 257 U. S. 277.

The sale may nevertheless be subject to regulation by Rhode Island. It is unnecessary to cite many cases on the general principle that a transaction may be interstate commerce and

yet subject to regulation by a state, in the absence of regulation by Congress.

Olsen v. Smith, 195 U. S. 332, 341 ;

Port Richmond Ferry Co. v. Hudson Co., 234 U. S. 317, 330 ;

Compare: *Sault St. Marie v. International Transit Co.*, 234 U. S. 333 ;

Bush v. Maloy, 45 Sup. Ct. R. 326 ;

Buck v. Kuykendall, 45 Sup. Ct. R. 324 ;

See: Annotations 7 A. L. R. 1094.

In *Pennsylvania Gas Co. v. Public Service Commission*, 252 U. S. 23 (1920), the general principles are clearly laid down, and are applied to a sort of commerce similar to that here in question. In that case the Gas Company transported gas from Pennsylvania to points in New York, and sold directly to the consumer there. The Supreme Court of the United States held that the transmission and sale was interstate commerce, but that nevertheless the State of New York had power to regulate the sale by the Pennsylvania Company to local New York consumers and fix the rates.

The Court said :

"In dealing with interstate commerce it is not in some instances regarded as an infringement upon the authority delegated to Congress, to permit the States to pass laws indirectly affecting such commerce when needed to protect or regulate matters of local interest. Such laws are operative until Congress acts under its superior authority by regulating the subject-matter for itself." (Page 29.)

The Court goes on to quote the *Minnesota Rate Cases*, 230 U. S. 352, at 402 :

"But within these limitations there necessarily remains to the States, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. It extends to those matters of a local nature as to which it is impossible to derive from the constitutional grant an intention that they should go uncontrolled pend-

ing Federal intervention. Thus, there are certain subjects having the most obvious and direct relation to interstate commerce, which nevertheless, with the acquiescence of Congress, have been controlled by state legislation from the foundation of the Government because of the necessity that they should not remain unregulated and that their regulation should be adapted to varying local exigencies; hence, the absence of regulation by Congress in such matters has not imported that there should be no restriction but rather that the States should continue to supply the needed rules until Congress should decide to supersede them. . . . Our system of government is a practical adjustment by which the National authority as conferred by the Constitution is maintained in its full scope without unnecessary loss of local efficiency. Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the State appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power.’”

The Court then said with regard to the case before it:

“This local service is not of that character which requires general and uniform regulation of rates by congressional action, and which has always been held beyond the power of the States, although Congress has not legislated upon the subject. While the manner in which the business is conducted is part of interstate commerce, its regulation in the distribution of gas to the local consumers is required in the public interest and has not been attempted under the superior authority of Congress.

“It may be conceded that the local rates may affect the interstate business of the Company. But this fact does not prevent the State from making local regulations of a reasonable character. Such regulations are always subject to the exercise of authority by Congress enabling it to exert

its superior power under the commerce clause of the Constitution." (Page 31.)

In *Mill Creek Coal Co. v. Public Service Commission*, 84 W. Va., 662; Public Utilities Rep. 1920A, 704, the Supreme Court of West Virginia applied the same principles to a case of the sale of electric current, where the situation was substantially the same as in the *Pennsylvania Gas Co.* case, the electric current being generated in Virginia and sold to local consumers in West Virginia.

The Court said:

"But, though interstate commerce is involved, the state is not necessarily deprived of the right to regulate and supervise under its police power. That which is attempted here is regulation of the rates at which electric power produced in Virginia shall be sold in West Virginia. It is settled law that the police power of the state embraces regulations designed to promote the public convenience or the general welfare or prosperity, as well as those in the interest of the public health, morals, and safety. . . . And it is clear that the regulation of the rates of public utilities is for the public convenience and general welfare, and hence a proper exercise of the police power of the state. . . . (Page 672.)

"Congress has never asserted its paramount power over interstate transmission of electric power; hence it only remains to consider whether the regulation of rates at which electric current shall be sold is essentially local, or of such national importance as to require a general system or uniformity of regulation. The vital distinction should be noted between regulation of rates of transportation and of the rates at which a commodity shall be sold. Transportation across state lines, involving as it frequently does many or all states, is generally a matter of national importance requiring uniformity of regulation respecting the rates thereof, and hence is usually beyond the regulatory power of the state. Because of the very nature of the subject matter conflicting state regulations respecting rates

ordinarily would result in discord and chaos. There are instances, however, when even in such cases the regulatory power of the state has been sustained. . . .

"In fixing the rates of sale, however, as distinguished from rates of transportation, the duty regulated is of an entirely different nature." (Page 674.)

The distinction between rates of sale and of transportation will be considered hereinafter more at length in sub-division III of the argument, *infra* p. 30.

In *Missouri v. Kansas Natural Gas Co.*, 265 U. S. 298 (hereinafter called the *Missouri* case) the Court held that the transportation of gas from outside the State of Kansas by a foreign corporation and its sale to public service companies there by that corporation was interstate commerce of such a character that the rates at which the gas was sold could not be regulated by the Kansas Public Utilities Commission. This case is the only case at all near the present one, in which the power of a state to regulate interstate commerce, in the absence of congressional action, is denied. It is distinguishable from the present case.

The Court there said:

"The business of the Supply Company (the Kansas Natural Gas Co.) with an exception not important here, is wholly interstate. The sales and deliveries are in large quantities not for consumption but for resale to consumers." (Page 306.)

On this ground the case was distinguished by the Court from the *Pennsylvania Gas Co.* case.

The purpose of the regulative action by the State in the *Missouri* case was simply to keep down the price of gas brought from outside the State. The State had the right to regulate the local companies for the benefit of the local consumers, but not to regulate a foreign company doing exclusively an interstate wholesale business in that State.

These facts distinguish the *Missouri* case from the present case. If the Narragansett Company generated electricity wholly, or almost wholly, for use out of the State of Rhode

Island, the power of the Rhode Island Commission to fix the price, at which it should be sold for such use, might be doubtful. But the business of the Narragansett Company is principally local business in Rhode Island; and it is impossible for the Rhode Island Public Utilities Commission to exercise effectively its undoubted powers to regulate the rates for electricity furnished to local consumers, without also regulating the rates for other service furnished by the Narragansett Company. On that ground the regulation of such other service should be allowed, even though it does incidentally affect interstate commerce.

If the Narragansett Company is obliged to continue furnishing a large quantity of electricity to the Attleboro Company at a loss, it is evident that it cannot go on with its business without charging the local Rhode Island consumers more than the fair cost of the electricity furnished to them, and the power of the Commission to secure fair prices for such consumers will be nullified.

This would be unfortunate in the absence of Federal regulation especially where the regulation of rates by the State commissions has apparently been most satisfactory. It has been so pronounced by no less an authority than Secretary of Commerce Hoover in an address delivered June 17, 1925, before the National Electric Light Association upon the subject of "State versus Federal Regulation in the Transformation of the Power Industry to Central Generation and Interconnection of Systems". (*Electrical World*, vol. 85, pp. 1309, 1310; issue of June 20, 1925, No. 25.) Mr. Hoover said (1310):

"During the past year the Department of Commerce has been engaged upon a study into the effectiveness and the results of state regulation of the industry. Few people seem to realize the fullness, the extent and the authority of the regulation now in effect. It is scarcely necessary for me to say that there is either state or municipal regulation of the rates of electrical utilities in all but two of the states and of service in all but five of the states. The financial operations of such utilities are supervised and controlled in a large majority of the states. These princi-

ples are being rapidly extended over the few remaining states.

No one can survey the work of the State commissions and the instructive series of court decisions concerning their rulings as a whole without realizing that we are gradually developing a science of regulation and of understanding on one hand of the means of drawing the fine line between minimum rates to the people and on the other hand of such a reasonable profit to the industry as will stimulate its advancement. It is my belief from this investigation that the Public Service Commissions with very little just criticism are proving themselves fully adequate to control the situation. The laws as written in the state statute books are sufficient to protect both the public and the industry, the two parties to the utility contract."

The only judicial pronouncement on precisely this question is in the opinion of Judge Brown in the United States District Court, in Rhode Island, when this same controversy was before him (295 Fed. 895, 897; Rec. pp. 1, 3). Judge Brown said:

"As it is apparent that losses upon contracts for the delivery of electrical energy for use outside the state might affect the financial ability of the Narragansett Company to render service in Rhode Island at reasonable rates, and that there might thus result a discrimination in rates which would be unfavorable to residents of Rhode Island and favorable to the residents of Massachusetts engaged in the same lines of industry, we should be reluctant to accept the contention that, though the corporate capacity of the Narragansett Company to contract with citizens of Rhode Island is plainly limited and subject to legislative control through the Public Utilities Commission, yet in making contracts with corporations or citizens of contiguous or remote states for the supply of electricity generated in Rhode Island it is free from such control."

If there were any Federal commission having authority to regulate rates for the service in question, it would have exclusive jurisdiction to do so. Presumably it would allow the Nar-

ragansett Company to charge reasonably remunerative rates. But there is no such Federal commission. And the Massachusetts Public Service Commission is without authority to give relief, and would be so under the *Missouri* case, even if the electricity were delivered at a point inside of Massachusetts.

That the Kansas Commission, in the *Missouri* case, and the Massachusetts Commission here, should be without authority to regulate the sale at wholesale, to public utilities, of gas or electricity brought from without the state, but the Rhode Island Commission should have authority to regulate the sale of electricity generated in Rhode Island and destined for points outside the state, under the circumstances of the present case, is a perfectly reasonable distinction. The line between direct interference with interstate commerce, which is not allowed, and indirect interference as an incident of the exercise of the power of the state to regulate its local business, which is allowed in the absence of congressional action, can and should be drawn right here.

The fact that the chief business of the Narragansett Company is its local business in Rhode Island is the important point. The purpose of the regulation of the rates on the whole business of the Company, including the interstate service, is not to regulate interstate commerce, but to regulate the local public service, and the regulation of the interstate commerce is a necessary incident to the carrying out of that purpose.

If the Narragansett Company gave a local retail service to consumers in Massachusetts it would be subject to regulation as to such business by the Massachusetts Public Service Commission, under the *Pennsylvania Gas Co.* case, although such business would be interstate commerce. If it sold to public utility companies in Massachusetts who distributed to local consumers there, the rates for such local distribution would be subject to regulation. *Public Utilities Commission v. Landon*, 249 U.S. 236.

The *Missouri* case does not decide, nor intimate in any way, that the Narragansett Company, if it did both a retail business and a wholesale business to public utility companies in Massachusetts, might not be subject to regulation by Massachusetts

with respect to all its business, on the ground that, in order to render the regulation of the local business effective, the wholesale business of the same company within the state must also be regulated. It might well be, if the Narragansett Company actually entered the State of Massachusetts, and delivered its electricity there to both local consumers and public utility companies, that it would be subject to regulation by Massachusetts with respect to its whole business in Massachusetts. But that would be going much farther than is necessary in the present case, where the business of a Rhode Island company, which does not go out of Rhode Island, and which enjoys rights, locations and franchises only in Rhode Island, is being regulated by the Rhode Island Commission.

The regulation of the whole business of the Narragansett Company, including the interstate business, by the Rhode Island Commission, only incidentally affects interstate commerce; and such incidental effect upon interstate commerce does not invalidate the regulation. In the *Pennsylvania Gas Co.* case, the Court said:

"It may be conceded that the local rates may affect the interstate business of the Company but this fact does not prevent the State from making local regulations of a reasonable character." (Page 31.)

Even though the regulation of the interstate business here affects it more directly than in the *Pennsylvania Gas Co.* case, yet it affects it only indirectly, because the purpose of the regulation is the proper control of the local business, and the effect on the interstate business is only incidental to that purpose.

There is no claim here that any discrimination is made against the interstate service. In the following cases, where the transmission of gas between states was declared to be free from the burdens which the States attempted to impose, the interstate commerce was of a wholesale character, and there was discrimination against it because it was interstate:

Oklahoma v. Kansas Natural Gas Co., 221 U. S. 229;

Penna. v. W. Va., 262 U. S. 553, 557;

United Fuel Gas Co. v. Hallanan, 257 U. S. 277.

So long as there is no discrimination against interstate commerce there is no necessity for uniform regulation by Congress nor for uniformity of governmental nonaction. But such necessity may exist where there is discrimination against interstate commerce. This was recognized in the *Missouri* case at page 310 :

"Such uniformity, even though it be uniformity of governmental nonaction, may be highly necessary to preserve equality of opportunity and treatment among the various communities and States concerned. See, for example: *Welton v. Missouri*, 91 U. S. 275, 282; *Hall v. De Cuir*, 95 U. S. 485, 490."

A very logical and sound distinction can thus be taken between cases where the discrimination is against interstate commerce and where the discrimination is against local public service.

See: *People's Natural Gas Co. v. Public Service Comm.*, 279 Pa. 252, 265.

There are some additional facts which distinguish this case from the *Missouri* case. The Narragansett Company enjoys rights, locations and franchises from the State of Rhode Island and from the municipalities thereof which were granted for the purpose of enabling the Company to render public service to consumers within Rhode Island. (See, for example charter amendment of April 19, 1917; Laws of Rhode Island, 1917, pp. 341-378, Appendix B, p. 46). It enjoys no corresponding rights, locations and franchises in or from the Commonwealth of Massachusetts.

In the *Missouri* case the Supply Company was operating under no such rights, locations or franchises. On the contrary, it was a foreign corporation doing business in Kansas and Missouri where the regulations were sought to be imposed. These facts are succinctly stated in the concluding paragraph of the opinion as follows :

"That some or all of the distributing companies are operating under state or municipal franchises cannot affect the question. It is enough to say that the Supply Com-

pany is not so operating and is not made a party to these franchises by merely doing business with the franchise holders."

In our case the Narragansett Company is sought to be regulated in the interest of the public welfare by the State which incorporated it. It is sought to be regulated in a business which has been fostered by special concessions from that State and its municipalities during a period of forty years. During this whole period up to the time the contract with the Attleboro Company became effective in 1917, the Narragansett Company had confined itself to public service within the State of Rhode Island. Its business before 1917 was entirely local. The contention of the Attleboro Company is that the transaction in interstate commerce was essentially national. If the Narragansett Company were to discriminate between its customers in Rhode Island by charging insufficient rates in Providence might not this constitute cause for forfeiture of its franchises in other cities in Rhode Island? If so, might not the continued performance of the contract with the Attleboro Company at the contract rate, which the Commission has found to be insufficient and unjustly discriminatory, impair the rights, locations and franchises of the Narragansett Company? Can it be said that the transaction in interstate commerce was essentially national and not essentially local when the performance of the contract is made possible only by the exercise of local rights, locations and franchises which may be subjected to forfeiture by such performance?

II.

The charter power of the Narragansett Company to contract with respect to rates was subject to and limited by the power of the Commission to fix reasonable rates and to substitute reasonable rates for unreasonable rates.

The Public Utilities Act of Rhode Island (for pertinent extracts see Appendix A, p. 39) was enacted in 1912 and was in force when the contract was entered into in 1917 which purported to fix a rate to the Attleboro Company that was to con-

tinue in effect for a period of twenty years. Upon application to the Commission by the Narragansett Company an order of the Commission was procured on May 23, 1917, which authorized the Narragansett Company to grant the Attleboro Company the contract rate at the State Line between Rhode Island and Massachusetts. (Order No. 335 ; R. 390.)

The order provided that the said rate should be shown in Schedule No. 68 of the Narragansett Company. It avoided any mention of the period of time for which the contract rate was to be effective. The contract rate was authorized only because it was reasonable at the time it was authorized. (R. 401, 402, 403.) The mere fact that a Public Utility Commission has approved a certain rate schedule does not attach to that particular schedule any element of permanence. It does not mean even that the rate shall be free from regulation for the term fixed by the parties. The police power of the State cannot be so suspended.

Union Dry Goods Co. v. Georgia P. S. C., 248 U. S. 372.

The policy of the Public Utilities Act of Rhode Island would be defeated by inserting in the order approving the contract rate the period of time for which such approval was given since Section 21 (Appendix A, p. 42) of that Act gave the Commission after hearing and investigation power to order reasonable rates substituted for unreasonable rates and Sections 26 to 28 (Appendix A, pp. 42-43) gave the Commission power to proceed upon its own motion to institute such hearing and investigation. It is therefore necessary for the Narragansett Company to satisfy the Commission that the contract rate is reasonable whenever the contract rate is sought to be cancelled on the ground that it is unreasonable.

The basis for this limitation on the contractual power of the Narragansett Company by way of continual subjection of its rates to the test of reasonableness by the Commission is the interest of public welfare in the protection of customers of an electric lighting company which has dedicated its private property to public use. In consideration for such dedication the Narragansett Company has been granted various rights, loca-

tions and franchises. The dedication of private property to public use has occurred only within the State of Rhode Island and the consideration has moved entirely from the State of Rhode Island and its municipalities, but the dedication includes property used both for the Attleboro service and for other service of the Narragansett Company. A reasonable return upon the Attleboro service as well as upon the other service of the Narragansett Company can therefore properly be required of the Narragansett Company in the interest of public welfare by the State of Rhode Island.

There are also limitations upon the contractual power of the Narragansett Company which exist apart from statutory regulation of rates, such as (1) the lack of charter power to freely contract upon any and all terms which might be deemed expedient and (2) the subjection to forfeiture of special rights, locations or franchises enjoyed at the pleasure of the State of Rhode Island and/or its municipalities resulting from the peculiar nature of the respective grants of such rights, locations or franchises.

All of these limitations upon the contractual power of the Narragansett Company go to the reasonableness of the rate to which the Narragansett Company shall be entitled. They existed in 1917 and continue to exist at the present time. The Attleboro Company entered into the contract which purported to fix the rates for a period of twenty years chargeable with knowledge of and necessarily subject to all of such limitations and subject also to all reservations of power by the State of Rhode Island and by its municipalities.

Union Dry Goods Co. v. Georgia P. S. C., 248 U. S. 372.

III.

The contract rate here involved was peculiarly subject to regulation by the Commission because it constituted a sale price at the State Line as distinguished from a transportation rate in interstate commerce.

An unusual feature in our case is that the electrical current is delivered at the State Line. The Narragansett Company generates the current at its plant in Rhode Island, transmits it to the State Line, and there delivers it. The transaction is one of sale at the State Line by a Rhode Island Public Utility Company operating within the State of Rhode Island. The rate sought to be regulated is the sale price of a commodity at the State Line—not a transportation rate in interstate commerce. The sale price of a commodity is distinguishable from a transportation rate in interstate commerce in that the sale price of the commodity of a local public utility company is essentially of local concern, while a transportation rate in interstate commerce is essentially of national concern. The sale price alone does not require nor reasonably admit of uniformity of Federal regulation.

The distinction between a sale price and a transportation rate in interstate commerce is thus stated in *Mill Creek Coal & Coke Co. v. Pub. Ser. Comm.*, 84 W. Va. 662, 674:

"In fixing the rates of sale . . . as distinguished from rates of transportation, the duty regulated is of an entirely different nature. The duty of the power company to sell at reasonable rates was one owed both to citizens of Virginia and to the public in this state. But the two duties do not overlap as they do where rates of transportation are concerned. The price at which a commodity is sold is essentially local, affecting chiefly those in the community where it is made, and only incidentally, if at all, touching those outside of the community. So long as the rate fixed is not discriminatory or confiscatory, but yields a fair return upon the valuation of the property, it throws no burden upon citizens of other communities or states. As said in *Re Pennsylvania Gas. Co.*, 225 N. Y. 397, respecting

the regulation of the sale of gas imported from another state: 'It is idle to speak of the need of uniformity of action by states of equal competence when there is only one state whose action is involved. But even within the state diversity rather than uniformity is exacted by the conditions of the business. Rates adequate in one city are inadequate in another. The local needs are best known to local agencies of government. No central authority acting for the nation as a whole will readily discern them.' A similar conclusion was reached in *Manufacturers' Light & Heat Co. v. Ott*, 215 Fed. 940. The local regulation stands until Congress occupies the field."

In *Missouri v. Kansas Gas Co.*, 265 U. S. 298, 309 (upon authority of which the Supreme Court of Rhode Island held that the order of the Commission constituted an improper interference by the State with interstate commerce), the sale was inseparably connected with transportation and delivery through the interstate pipe lines of the company sought to be regulated. The Court said:

"The transportation, sale and delivery constitute an unbroken chain, fundamentally interstate from beginning to end, and of such continuity as to amount to an established course of business. The paramount interest is not local but national, admitting of and requiring uniformity of regulation."

IV.

All contracts made by Public Utilities with respect to rates are subject to regulation by the State in the exercise of its Police Power.

If the Rhode Island Public Utilities Commission is not precluded from changing the contract rate in this case by the Commerce Clause of the Constitution, it is well established that it is not so precluded by the prohibition against impairing the obligation of a contract, or the clauses of the Constitution guaranteeing equal protection of the laws and due process of law. All contracts of public utilities are subject to the

power of the States to regulate rates as a part of the police power. Here the law establishing the Public Utilities Commission was previous to the contract, although that point is not essential. The contention that the constitutional provision as to the equal protection of the laws and due process of law prevent a change in such contracts is disposed of by the cases dealing with the alleged impairment of contracts.

Union Dry Goods Co. v. Georgia P. S. Commission, 248 U. S. 372;

Producers Transportation Co. v. R. R. Commission, 251 U. S. 228, 232;

Law v. R. R. Commission, 184 Cal. 737, 195 Pac. 423, P. U. R. 1921, C. 156;

Mill Creek Coal Co. v. Pub. Service Commission, 84 W. Va. 662; 100 S. E. 557; P. U. R. 1920A, 704;

East Providence Water Co. v. Pub. Ut. Commission, Supreme Court of R. I., Apr. 6, 1925.

See quotations from these cases, and citations of other cases, in our brief before the Commission. (R. 361-364.)

V.

The contract rate is unjust and unreasonable, and the Commission properly displaced that rate, and substituted the new rate, which is just and reasonable.

Whether the regulation of the rates of a public utility is constitutional ultimately depends on whether the regulation is a reasonable exercise of the police power in the promotion of the public interest. In most cases as to rates, however, the question comes down practically to the issue whether the rates are reasonably compensatory.

The Legislature has declared that all rates collected by any public utility for any heat, light, water or power delivered or furnished shall be "reasonable and just". *Public Utilities Act* of 1912, c. 795, Sec. 38. (General Laws 1923, c. 253, Sec. 38.) See also Secs. 39 and 40. Appendix A, pp. 43-44.

The original contract rate is unreasonable at the present time.

The rates upon each class of business done by a public utility should be *reasonably compensatory for the service rendered, without regard to return obtained from other classes of business.*

This sort of question has generally been raised in cases where public service commissions have fixed rates, for a particular class of service, which were alleged to be not compensatory. The Supreme Court in recent cases of this kind has laid down the principle above stated.

Interstate Commerce Commission v. Union Pac. R. R.,
222 U. S. 541, 549;

Northern Pac. Ry. Co. v. North Dakota, 236 U. S. 585;
Vandalia R. R. Co. v. Schnull, 255 U. S. 113.

See quotations from these and other cases in our brief before the Commission. (R. 372-376.)

In that class of cases the argument for the validity of the rate established by the Commission was stronger than the present argument advanced against the authority of the Commission to raise the contract rate. The act of the State Commission might conceivably be upheld as long as the company was not prevented from getting a fair return on its entire business. Such a view seems to have been at one time held by the Supreme Court of the United States. See *Willcox v. Consolidated Gas Co.*, 212 U. S. 19.

But the Court in the *Northern Pacific Case*, above cited, repudiated any such doctrine, and denied that the *Willcox* case, or any other earlier cases, were to be considered as authority therefor. It is therefore unnecessary to deal with any cases earlier than the *Northern Pacific* case, which has been confirmed by the two latter cases above cited.

In the present case, the order of the Commission, acting under State authority, was attacked because it displaced as unreasonable a rate established by contract. The Supreme Court of Rhode Island was asked to declare reasonable a rate which the Commission had declared unreasonable.

In *Public Utilities Commission v. Wichita R. & L. Co.*, 268 Fed. 37, 41, 42, the Circuit Court of Appeals had before it a similar case, where an old contract rate was superseded, and

the Court declared the principle above stated, that the rates of each particular class of service must be reasonably compensatory for the service rendered.

Upon appeal to the Supreme Court of the United States, the decision was reversed (260 U. S. 48) on the ground that the appellant had not had a proper opportunity to contest the facts, and that there was no proper finding of the facts. There is nothing to show that the decree of the Circuit Court of Appeals would not have been affirmed if there had been a proper finding of the facts alleged. See a discussion of this case in our brief before the Commission. (R. 369-372.)

The case of *Wichita R. & L. Co. v. Court of Industrial Relations*, 113 Kan. 217, 214 Pac. 797, P. U. R. 1923D, 593, is not in point. In that case the Court held that the return from a certain contract was compensatory notwithstanding that the Commission had held it to be non-compensatory. But the ground of the decision was that the cost had decreased since the finding of the Commission and appeared at the trial in court to be so low that the contract was amply compensatory.

The case of *Arkansas Natural Gas Co. v. Arkansas R. R. Commission*, 261 U. S. 379, is also not in point, because there the statute provided that the Commission should have no jurisdiction to change existing contracts. These two cases are discussed in our brief before the Commission. (R. 377-379.)

In *Attleboro Co. v. Narragansett Co.*, 295 Fed. 895, 901, 902 (R. 14-16), Judge Brown said :

“ In the records of the proceedings of the commission we find no sufficient statement of any finding made after hearing and investigation upon the question of the unreasonableness of the contract rate or of the reasonableness or propriety of the new rate, unless in the following recital :

“ ‘ It appearing that a continuance of the operation of the terms of the rate contract between said companies would result in a loss to the petitioning company and would therefore discriminate against its other customers.’

"The finding that the contract was unprofitable and therefore discriminatory rested upon ex parte statement, and moreover is a non sequitur.

"That the initial return was low and that profit was expected during later years was stated in the defendant's application to the commission for approval of the contract rates. There was no finding that a present loss would result in rendering the contract as a whole unprofitable.

"Before a contract can be interfered with under the police power, it must appear that the contract does in some manner affect adversely the welfare of the public.

"There is nothing in the records to show that the defendant brought to the notice of the commission any evidence that the company would be unable to perform its full duty to the community whose interest it is the function of the committee to protect."

"Even if the commission had received an ex parte statement that a single contract was for the time being unprofitable, this was far from establishing the fact that the public interest had been injuriously affected."

From this it appears that the ground of Judge Brown's decision was that there was no proper finding of facts after a hearing.

See *Rivelli v. Providence Gas Co.*, 44 R. 1. 76; 115 Atl. 461.

There are now findings (R. 400 et seq. and our statement of facts, *ante* p. 8) after a full hearing, that the contract rate fails to pay the actual cost of the service, exclusive of any return on investment used in furnishing such service, and that the loss, instead of becoming less, will increase in future years. It necessarily follows that such rates are unjustly discriminatory, and impair the ability of the company to give service to the public at fair rates. The Commission expressly finds that a continuance of service under the contract rates "will be detrimental to the general public welfare, and will prevent the Narragansett Company from performing its full duty towards its other customers". (R. 404.)

The evidence is fully reported in the record. The opinion of the Commission analyzes it carefully, and shows the manner in which its conclusions are reached. The arguments before the Commission of counsel on both sides (incorporated in the Record pp. 188-222) discuss the facts at length. It is unnecessary to consider here how far the findings of the Commission should have weight with the Court, for we are confident that the evidence not only supports, but necessarily leads to, such findings. It is undoubtedly the right of this Court to give its independent consideration to the facts as well as the law in the case, so far as is necessary to decide the constitutional points involved.

Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 287.

Bluefield Imp. Co. v. W. Va. Public Service Commission, 262 U. S. 679, 689.

We submit that the findings and the evidence go further than is necessary to support the order of the Commission superseding the contract rates. The Narragansett Company is entitled to receive on this class of business the same reasonable compensation for its service, including a return on its investment, as it is entitled to receive on its other business. But here an actual loss is shown, of a permanent nature, which on any theory renders the rate unreasonable. And when the Commission has properly cancelled the contract rate, and proceeds to fix a reasonable new rate, there is no suggestion in any of the cases that it should not determine the new rate on the same principles that would apply if there had never been any contract.

VI.

There is no question as to the jurisdiction of the Commission to make the order.

In deciding that the order of the Commission constituted an "improper interference *by the State* with interstate commerce" (italics ours; R. 442) the Supreme Court of Rhode Island shortly disposed of the claim then made by the Attleboro Company that the Commission had no jurisdiction to make the

order. The Commission derives all its authority from the State. The State has acted only through its Commission. How could it now be said that the Commission acted without authority from the State when it has been decided that the order constituted an interference by the State? If the Commission acted without authority the interference would not be by the State. Our contention is that the interference by the State through its Commission was not an *improper* interference by the State. The issue now is entirely on the Federal question.

Red Cross Line v. Atlantic Fruit Company, 264 U. S. 109, 120.

Even if it had not been decided by the State Court that the Commission had jurisdiction to make the order, an examination of the terms of the Public Utilities Act readily discloses the intent of the legislature. Sections 18 and 21 (Appendix A, pp. 41-42) give the Commission power to regulate "*any* of the rates" of any public utility. Section 2 defines a public utility as "every corporation . . . that now or hereafter may own . . . or control any plant or equipment . . . within this state . . . for the production, transmission, delivery, or furnishing of gas, electricity . . . or power, either directly or indirectly to or for the public . . ." Section 56 provides for liberal construction.

Moreover the order in question is within the purposes of the Act. There is no decision nor dictum of the Supreme Court of Rhode Island to the contrary. At the time the contract was made the property of the Narragansett Company was dedicated to public use only in Rhode Island where it had over 30,000 customers. It enjoyed no rights, locations or franchises and had no customers in Massachusetts. The contract was entered into by a Rhode Island public utility corporation having limited contractual powers. By the terms of the contract current was to be delivered at the State Line. The contract was submitted to the Commission for its approval and was not made effective until the Commission made an order authorizing the contract rate to be granted. (R. 390.) When the order increas-

ing the rates was made the Narragansett Company had over 70,000 local customers in Rhode Island. (R. 287.) It was not doing business in Massachusetts and had no property dedicated to public use in that State. The contract rate had then become unreasonable and discriminatory. If the Commission cannot establish reasonably compensatory rates for service to large customers like the Attleboro Company it cannot impose on the Narragansett Company rates which will be reasonable for the service rendered to consumers generally.

Respectfully submitted,

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APPENDIX A.

GENERAL LAWS OF RHODE ISLAND, 1923, CHAPTER 253
(PUB. LAWS 1912, CH. 795).

*Of the Public Utilities Commission and of the Regulation
and Control of Public Utilities.*

(3664)

Section 1. This chapter shall be known as the Public Utilities Act, and shall apply to the public utilities herein described and to the commission hereby created, and to the public utility corporations and persons herein mentioned and referred to.

(3665)

Sec. 2. The term "commission," when used in this chapter, means the public utility commission hereby created.

The term "commissioner," when used in this chapter, means one of the members of such commission.

The term "corporation," when used in this chapter, includes a corporation, company, association and joint stock company or association.

The term "person", when used in this chapter, includes an individual, corporation, and a firm or co-partnership.

The term "public utility," when used in this chapter, shall mean and embrace, and apply to every corporation, company, person, association of persons, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, lease, operate, manage or control any railroad, or street railway within this state, or that now or hereafter may operate or do business as a common carrier within this state; and to every corporation, company, person, association of persons, their lessees, trustees or receivers, appointed by any court whatsoever, that now or hereafter may own, lease, operate, manage or control any plant or equipment, or any part of any plant or equipment, within this state for the conveyance of telegraph or telephone messages, or for the production, transmission, delivery, or furnishing of gas, electricity, water, light,

heat or power, either directly or indirectly to or for the public: *Provided*, that this chapter shall not be construed to apply to any public water works and water service owned and furnished by any city or town.

The term "common carrier," when used in this chapter shall mean and apply to and embrace all railroad corporations, street railway corporations, express companies, freight companies, freight line companies, dining-car companies, steam-boat, power-boat and ferry companies, and all persons and associations of persons whether incorporated or not, and their lessees, trustees and receivers, appointed by any court whatsoever, operating any agency for public use in the conveyance of persons or property within this state by land or by water, or both.

The term "railroad," when used in this chapter includes every railroad other than a street railway, by whatsoever power operated for public use in the conveyance of persons or property for compensation, with all bridges, ferries, tunnels, switches, spurs, tracks, stations, wharves and terminal facilities of every kind, used, operated, controlled, leased or owned by or in connection with any such railroad.

The term "street railway," when used in this chapter includes every railway by whatsoever power operated or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for compensation, being mainly upon, along, above or below any street, avenue, road, highway, bridge or public place in any city or town, and including all switches, spurs, tracks, rights of trackage, subways, tunnels, stations, terminals, and terminal facilities of every kind, used, operated, controlled or owned, by or in connection with, any such street railway.

The terms "plant or equipment," when used in this chapter, shall mean and apply to and embrace all the real estate, easements, buildings, machinery, apparatus, devices, rolling stock and tangible property of whatsoever kind and nature, and wherever located, used, controlled, operated, leased or owned by a public utility in the conduct of the business thereof.

The term "service" is used in this chapter in its broadest and most inclusive sense.

(3666)

Sec. 3. There shall be a public utilities commission for the state, which commission shall be vested with and possessed of the powers and duties specified in this chapter, and also with all the powers necessary to enable said commission to carry out fully and effectually all the purposes of this chapter. . . .

(3681)

Sec. 18. Upon a written complaint made against any public utility by any city or town council, or by any corporation, or by any twenty-five qualified electors that any of the rates, tolls, charges or any joint rate or rates of any public utility are in any respect unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act whatsoever of any public utility, affecting or relating to the conveyance of persons or property or any service in connection therewith, or affecting or relating to the production, transmission, delivery or furnishing of heat, light, water or power, or any service in connection therewith, or the conveyance of any telephone or telegraph message, or any service in connection therewith, is in any respect unreasonable, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained or is unsafe, or the public safety is endangered thereby, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, regulations, measurements, practice, act or service complained of shall be entered by the commission without a formal public hearing. When any complaint shall be made by twenty-five or more qualified electors, such complaint shall designate one of the complainants upon whom shall be served all notices, orders and citations required by this chapter to be served upon complainants.

(3683)

Sec. 20. The commission shall give the public utility and the complainant, if any, ten days' notice of the time and place where and when such hearing and investigation will be held and such

matters considered and determined. Both the public utility and the complainant shall be entitled to be heard and appear by counsel, and shall have process to enforce the attendance of witnesses.

(3684)

Sec. 21. If upon such a hearing and investigation had under the provisions of this chapter, the commission shall find any existing rates, tolls, charges or joint rate or rates of any public utility to be unjust, unreasonable, insufficient or unjustly discriminatory or to be preferential or otherwise in violation of any of the provisions of this chapter, the commission shall have power to fix and order substituted therefor such rates, tolls, charges or joint rates as shall be just and reasonable.

(3689)

Sec. 26. Whenever the commission shall believe that any of the rates, tolls, charges, or any joint rate or rates, charged, demanded, exacted or collected by any public utility are in any respect unreasonable or unjustly discriminatory, or otherwise in violation of this chapter, or that any regulation, measurement, practice or act whatsoever of such public utility, affecting or relating to the conveyance of persons or property, or any service in connection therewith, or affecting or relating to the production, transmission, delivery or furnishing of heat, light, water or power, or any service in connection therewith, or the conveyance of telephone or telegraph messages, or any service in connection therewith, is in any respect unreasonable, insufficient, or unjustly discriminatory; or that any service of such public utility is inadequate or cannot be obtained, or is unsafe, or the public safety is endangered thereby, or that an investigation of any matter relating to a public utility should, for any reason be made, it may on its own motion, summarily investigate the same with or without notice.

(3690)

Sec. 27. If, after making such summary investigation, the commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters so investigated, it shall furnish such public utility interested, a

statement notifying the public utility of the matters under investigation. Ten days after such notice have been given the commission may proceed to set a time and place for a hearing and investigation.

(3691)

Sec. 28. Notice of the time and place for such hearing and investigation shall be given to the public utility and to such other interested persons as the commission shall deem necessary, as provided in section twenty hereof, and thereafter the proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the commission relative to the matter investigated, and the same order or orders may be made in reference thereto as if such hearing and investigation had been made on complaint.

(3697)

Sec. 34. Any public utility or any complainant, aggrieved by any order of the commission fixing any rate, toll, charge, joint rate or rates, or any order fixing any regulation, measurement, practice, act or service, may appeal to the supreme court for a reversal of such order on the ground that the rate, toll, charge, joint rate or rates, fixed in the order are unlawful or unreasonable, or that any such regulation, measurement, practice, act or service fixed in such order is unlawful or unreasonable.

(3702)

Sec. 39. If any public utility or any agent or officer of a public utility, as defined in this chapter, shall directly or indirectly by any device whatsoever, or otherwise charge, demand, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it in, or affecting or relating to, the transportation of persons or property between points within this state, or the production, transmission, delivery or furnishing of heat, light, water or power, or the conveyance of telegraph or telephone messages, or for any service in connection therewith, than that prescribed in the published schedules or tariffs then in force or established as provided herein or than it charges, demands,

collects, or receives from any other person, firm or corporation for a like and contemporaneous service, under substantially similar circumstances and conditions such public utility shall be deemed guilty of unjust discrimination which is hereby prohibited and declared to be unlawful, and upon conviction thereof shall be fined not less than two hundred dollars nor more than five hundred dollars for each offense; and such agent or officer so offending shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than fifty dollars nor more than five hundred dollars for each offense.

(3703)

Sec. 40. If any public utility shall make or give any undue or unreasonable preference or advantage to any particular person, firm, or corporation, or shall subject any particular person, firm or corporation to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, such public utility shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than two hundred dollars nor more than five hundred dollars for each offense.

(3719)

Section 56. The provisions of this chapter shall be interpreted and construed liberally in order to accomplish the purposes thereof, and where any specific power or authority is given the commission by the provisions of this chapter the enumeration thereof shall not be held to exclude or impair any power or authority otherwise in this chapter conferred on said commission. The commission shall have, in addition to the powers in this chapter specified, mentioned and indicated all additional, implied and incidental power which may be proper and necessary to effect and carry out, perform and execute all the said powers herein specified, mentioned and indicated. A substantial compliance with the requirements of this chapter shall be sufficient to give effect to all the rules, orders, acts and regulations of the commission, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto. Each section of this chapter, and every part of each section, are hereby declared to be independent

sections, and the holding of any section or sections or part or parts thereof to be void, ineffective, or unconstitutional for any cause shall not be deemed to affect any other section or part thereof.

APPENDIX B.

LAWS OF RHODE ISLAND, 1917, pp. 341-348.

AN ACT IN AMENDMENT OF AN ACT, ENTITLED "AN ACT TO INCORPORATE THE NARRAGANSETT ELECTRIC LIGHTING COMPANY", PASSED AT THE MAY SESSION OF THE GENERAL ASSEMBLY, A. D. 1884, AND THE SEVERAL ACTS IN AMENDMENT THEREOF AND RELATING THERETO.

Approved April 19, 1917.

It is enacted by the General Assembly as follows:

Section 1. The Narragansett Electric Lighting Company, a corporation created by an act of the general assembly, passed at its May session, A. D. 1884, and engaged in a general electric lighting, heating and power business, and for that purpose owning, leasing or controlling lines of a voltage of 11,000 volts or more for the transmission of electricity, is hereby authorized and empowered to complete or extend any such lines of a voltage of eleven thousand volts or more as it may from time to time own, lease or control, or any lines of such voltage operated or designed to be operated in connection therewith by acquiring and taking from time to time such additional lands and interests, estates and rights in lands (but not including the right to acquire or take under the provisions of this act any water power) as it may from time to time require for any such lines of the aforesaid voltage or for completing or extending any of the same and in the manner herein-after provided: *Provided, however,* that all rights under this act in the city of Providence are hereby confined to the location of such lines extending from the power station of the Narragansett Electric Lighting Company on the westerly side of the Providence river generally southerly and then across said river to a point (detailed description follows) . . . but nothing herein contained shall be construed as granting said corporation any right to locate

any of the same in, over or across any street or highway in said city; *and provided, further*, with respect to the taking of any portion of the land, location or right of way of any railroad, street railway or other public service company in said city, that said rights shall be subject to the provisions of Section 3 of this act; *and provided, further*, that said rights in the city of Providence shall be exercised within two years from and after the passage of this act and not thereafter; *and provided, further*, that said corporation shall not take under the provisions of this act any lands or any interests, estates or rights in any lands that shall have been acquired or may hereafter be acquired by any city or town for municipal or public purposes, except in such reasonable locations as may be approved by the city council of such city or the town council of such town: *Provided, further*, that said corporation shall not take under the provisions of this act any portion of any public street or highway of any town or city in this state or any other lands or interests, estates or rights in lands that shall have been acquired by any town or city in this state for municipal or public purposes, except in such reasonable locations as may be approved by the town council or city council of such town or city, respectively; and that said corporation shall not take under the provisions of this act, any lands, interests, estates or rights in lands in any town or city in said state except in such reasonable locations as may be approved by the town council or city council of such town or city, respectively; *and provided, further*, that said corporation shall not take under the provisions of this act any lands or any interests, estates or rights in any lands in the town of East Providence lying southerly on a line running from a point on the shore of the Providence river (detailed description follows) . . . *and provided, further*, that said corporation shall not take under the provisions of this act any lands or any interests, estates or rights in any lands after the expiration of ten years from and after the date of the passage of this act.

Sec. 2. Whenever said corporation desires to take any

lands, interests, estates or rights therein it may proceed to acquire the right to use such land and to acquire such estate or easement in such land as it may deem necessary for its said corporate purposes in the following manner; said corporation shall present a petition to the superior court of the State of Rhode Island, in the county where such right, easement or estate is required, setting forth the right, easement or estate required, the name or names of the owner or owners (then follow details of procedure for hearing on the petition). . . . (Page 344.)

(Page 345 :)

At the time fixed for said hearing the said court if it shall find the use and taking of the right, easement or estate mentioned in said petition to be necessary for its said corporate purposes shall thereupon appoint three disinterested persons resident of the county, commissioners to assess and appraise the damages. . . .

(Page 347 :)

Sec. 3. Nothing in this act shall authorize the Narragansett Electric Lighting Company to condemn any portion of the land, location or right of way of any railroad, street railway or other public service company, except for the purpose of crossing the same either above or below grade and of maintaining suitable and convenient supports for such crossing, in such manner as not to render unsafe, or to impair the usefulness of such land, location or right of way for railroad or street railway purposes or the purposes of such public service company. If said corporation and any such railroad, street railway or public service company are unable to agree as to the method and manner of the construction and maintenance of any such crossing, either may apply to the public utilities commission for a determination thereof, and, after hearing, such crossing shall be constructed and maintained in such method and manner as may be ordered by said commission. Either party aggrieved by such order of said commission may appeal to the supreme court in the manner provided by

Section 34 of the public utilities act. Said corporation shall be liable to any such railroad, street railway or public service company for such damages and reasonable expense as may result to it by reason of any line of said corporation crossing such railroad, street railway or public service company's land, location or right of way.

Sec. 4. Said corporation may convey any such transmission line or any part thereof or right or interest therein, and the rights acquired for the same, to any other corporation, company or association having the right to carry on the electric light, heat or power business in the town or city where such line or part thereof is located, or may enter into an agreement giving to any such corporation, company or association the right to use any such line or part thereof, or agreeing to transmit electricity for any such corporation, company, or association over such line or part thereof.

Sec. 5. The act incorporating said Narragansett Electric Lighting Company and the various amendments thereto are hereby amended in accordance with the provisions of this act.

Sec. 6. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect from and after its passage.



OCT 11 1926

WM. H. STANSBURY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. 217.

PUBLIC UTILITIES COMMISSION OF RHODE ISLAND
AND NARRAGANSETT ELECTRIC LIGHTING
COMPANY,
Petitioners,

v.

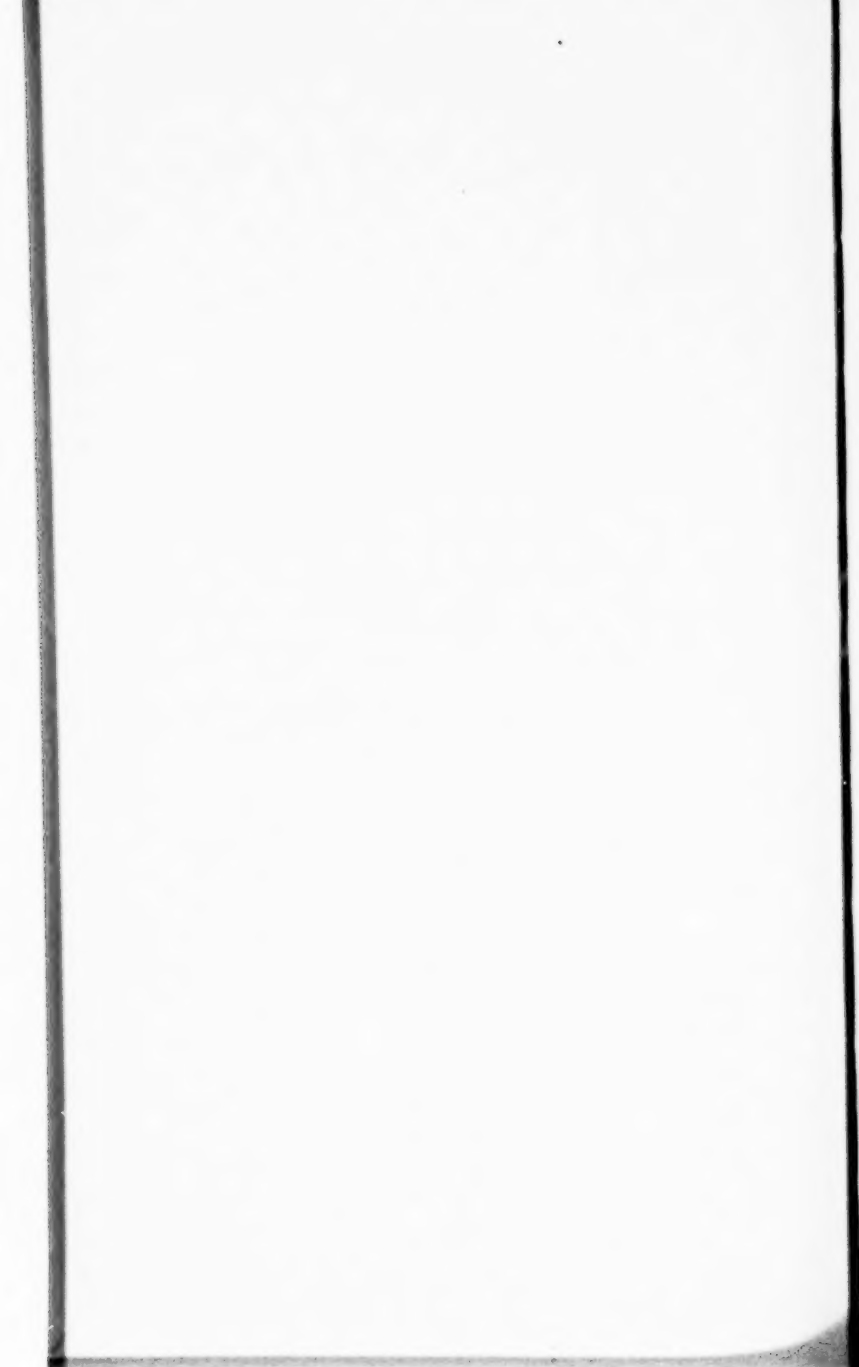
ATTLEBORO STEAM & ELECTRIC COMPANY,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF RHODE ISLAND.

BRIEF FOR PETITIONERS.

CHARLES P. SISSON,
Attorney General of the State of Rhode Island,
for PUBLIC UTILITIES COMMISSION OF RHODE ISLAND.

ROLAND W. BOYDEN,
ARTHUR M. ALLEN,
ROLAND GRAY,
FRANK D. COMERFORD,
Counsel for NARRAGANSETT ELECTRIC LIGHTING COMPANY.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. 217.

PUBLIC UTILITIES COMMISSION OF RHODE ISLAND
AND NARRAGANSETT ELECTRIC LIGHTING
COMPANY, PETITIONERS,

v.

ATTLEBORO STEAM & ELECTRIC COMPANY,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF RHODE ISLAND.

BRIEF FOR PETITIONERS.

PETITION FOR CERTIORARI GRANTED.

This Court on October 26, 1925, granted your petitioners application for a writ of certiorari to review a decision of the Supreme Court of Rhode Island. (No. 741, October Term, 1925; 269 U. S. 546; 46 Sup. Ct. Rep. 103; R. 450).

OPINION OF COURT BELOW NOT YET REPORTED.

The opinion of the court below, filed June 18, 1925 (R. 447), has not yet been officially reported, but appears in the Record at page 438 and in 129 Atlantic Reporter 495.

STATEMENT OF GROUNDS FOR JURISDICTION.

The final decree of the Supreme Court of Rhode Island which is now to be reviewed was entered on July 22, 1925 (R. 448).

Jurisdiction is grounded on Judicial Code Section 237 (b)

as amended by Act of February 13, 1925 (43 Statutes at Large 936) and upon specific federal claims advanced and a ruling made in the court below. The Supreme Court of Rhode Island held that a certain order of the Public Utilities Commission of Rhode Island constituted an improper interference by the State with interstate commerce. The specific Federal claims advanced, the ruling made and the statutory provisions under which jurisdiction is invoked are quoted below.

SPECIFIC FEDERAL CLAIMS.

The following are the specific Federal claims advanced by the Attleboro Steam & Electric Company in the lower court in its claim of appeal from the order of the Public Utilities Commission of Rhode Island (R. 424) :

"5. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, the act is as applied to the present case repugnant to the Constitution of the United States in that it has the effect of improperly interfering with interstate commerce.

"6. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, the act is as applied to the present case repugnant to the Constitution of the United States in that it has the effect of depriving the Attleboro Company of the equal protection of the laws.

"7. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, the act is as applied to the present case repugnant to the Constitution of the United States in that it has the effect of depriving the Attleboro Company of its property without due process of law.

"8. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, the act is as applied to the present case repugnant to the Constitution of the United States in that it has the effect

of impairing the obligation of the contract between the Attleboro Company and the State of Rhode Island implied in the Commission's approval of the rate specified in the above-mentioned contract between the Attleboro Company and the Narragansett Company.

"9. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, said order constitutes an improper interference with interstate commerce, so that the same is repugnant to the Constitution of the United States.

"10. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, said order has the effect of depriving the Attleboro Company of the equal protection of the laws, so that the same is repugnant to the Constitution of the United States.

"11. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, said order has the effect of depriving the Attleboro Company of its property without due process of law, so that the same is repugnant to the Constitution of the United States.

"12. If the Public Utilities Act purports to give the Commission jurisdiction to make the order in question, said order has the effect of impairing the obligation of the contract between the Attleboro Company and the State of Rhode Island implied in the Commission's approval of the rate specified in the above-mentioned contract between the Attleboro Company and the Narragansett Company, so that the same is repugnant to the Constitution of the United States."

RULING OF RHODE ISLAND COURT.

". . . the court finds that said order is unlawful and invalid for the reasons stated in the opinion, and it is, therefore,

Ordered, adjudged and decreed that said appeal be sus-

tained, that said order be reversed and that the complaint or notice of investigation upon which said order was entered be dismissed . . ." (R. 448.)

In the opinion it was stated (and this was the sole ground advanced for the decision) :

" . . . The Attleboro Co. challenges this order and claims it is unlawful and void on various grounds; the principal and decisive objection, in our judgment, is that said order is an improper interference by the State with interstate commerce." (R. 442.)

" . . . The case at bar we think is like the *Kansas* case (referring to *Missouri et al. v. Kansas Gas Co.*, 265 U. S. 298). Applying the principles confirmed therein, we think that the action of the State commission imposes a direct burden on interstate commerce and consequently is invalid. The intrastate and interstate business of the Narragansett Co. can be segregated. This separation has actually been made by that company and the Commission, in establishing a basis for the proposed new rate. The effect of the action of the Commission was direct on interstate commerce and incidental on local and State commerce. Such being the case there is no difference in principle because of the amount of interstate commerce involved, whether it is much or little, at wholesale or retail. The purpose of the state action is immaterial, if the result is to impose a direct burden on interstate commerce." (R. 446-447.)

STATUTORY PROVISIONS AND GROUNDS FOR JURISDICTION.

The statutory provisions under which jurisdiction for a writ of certiorari is invoked are found in Section 237 (b) of the Judicial Code as amended by Act of February 13, 1925, as follows (43 Statutes at Large 936, 937) :

"It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review

and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had . . . where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution . . . of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution . . . of . . . the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. . . ."

Your petitioners rely upon both grounds for invoking jurisdiction, viz.:

(a) That there was drawn in question the validity of a statute of the State of Rhode Island on the ground of its being repugnant to the Constitution of the United States, and the Federal claim was sustained;

(b) That a right, privilege, or immunity was specially set up or claimed by the Attleboro Steam & Electric Company under the Constitution of the United States and the Federal claim was sustained.

The following cases are believed to sustain jurisdiction:

Red Cross Line v. Atlantic Fruit Company, 264 U. S. 109, 120;

Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 288-289;

Live Oak Water Users' Association et al. v. Railroad Commission of California, 269 U. S. 354, 356;

Grand Trunk Western Ry. v. Railroad Commission of Indiana, 221 U. S. 400, 403, and cases cited;

Reinman v. Little Rock, 237 U. S. 171, 176;

Citizens National Bank v. Durr et al. 257 U. S. 99, 106-107.

STATEMENT OF THE CASE.

The Narragansett Electric Lighting Company (hereinafter the "Narragansett Company") was incorporated by a special act of the General Assembly of the State of Rhode Island passed May 29, 1884. (Laws of Rhode Island 1884, p. 29; Appendix B (a), *post*, pp. 88-89.) It has for forty-two years been engaged in a general electric lighting, heating and power business. By the act of incorporation and subsequent amendments thereto the State of Rhode Island has conferred upon the Narragansett Company certain special rights, locations and franchises and has authorized town and city councils within Rhode Island to grant corresponding rights, locations and franchises within their respective territorial limits. See, for example, the rights of eminent domain conferred by the amendatory Act of April 19, 1917. (Laws of Rhode Island, 1917, p. 341; Appendix B (b), *post*, pp. 90-93.) By an Act of April 29, 1918 (Laws of Rhode Island, 1918, p. 253; Appendix B (c), *post*, pp. 94-95), the Narragansett Company was authorized to acquire by lease, purchase or otherwise, the ownership or control of any right, property or franchise held by any person, corporation or association engaged in or authorized to engage in a business similar to that of the Narragansett Company and was authorized to give its securities in payment therefor. Many of the above-mentioned state and municipal grants of rights, locations and franchises have been given subject to regulation by general law or by order of city or town council as the case may be. In addition to the limitations by way of potential regulation attached to these specially granted rights, locations and franchises the Narragansett Company is subject to other limitations peculiar to general Rhode Island public utility corporations which exist by reason of the devotion by the company of its private property to public use within the State of Rhode Island. (Public Utilities Act of

Rhode Island, General Laws of Rhode Island, 1923, Chapter 253; See Appendix A, *post*, p. 75.) The Narragansett Company in 1923 supplied electrical current direct to 71,554 customers (R. 284, 287).

Attleboro Steam & Electric Company (hereinafter the "Attleboro Company") is a corporation organized and existing under the laws of the Commonwealth of Massachusetts. It supplies electrical current for public and private use in the City of Attleboro and vicinity in Massachusetts.

Seekonk Electric Company (hereinafter the "Seekonk Company") is a corporation organized and existing under the laws of the Commonwealth of Massachusetts.

Public Utilities Commission of Rhode Island (hereinafter the "Commission") was created by an Act known as the Public Utilities Act passed by the General Assembly of the State of Rhode Island in 1912, being Chapter 253 of the General Laws of Rhode Island of 1923. (Relevant sections of that Act are set out in Appendix A of this brief, *post*, pp. 75-87.)

Early in the year 1916 negotiations were entered into between the Attleboro Company and the Narragansett Company looking to the sale by the Narragansett Company and the purchase by the Attleboro Company of electrical energy for a period of twenty years. These negotiations culminated in a triparty contract (R. 256-274) dated May 8, 1917, between the Narragansett Company, the Attleboro Company and the Seekonk Company, whereby the Attleboro Company was to purchase all the electricity required for its own uses and for sale in the City of Attleboro and adjacent territory from the Narragansett Company at a specified rate for a period of twenty years. The current was to be delivered at the State line between the Town of East Providence, Rhode Island, and the Town of Seekonk, Massachusetts. From the State line the current is carried by the Seekonk Company's transmission lines in Massachusetts and metered at the transformers of the Attleboro Company at its generating plant in Attleboro. (R.

257-258.) The Narragansett Company then had and continues to have a sub-station at East Providence.

At no time has the Narragansett Company qualified to do business in the Commonwealth of Massachusetts or engaged in business therein. It has always been continuously engaged in a general electric lighting, heating and power business to customers in Rhode Island. Its generating plant is located at tide-water in the City of Providence, Rhode Island. It generates its electrical energy by steam through the use of coal and oil as fuel. In 1923 about one thirty-fifth ($1/35$) of the total product of the Narragansett Company went to the Attleboro Company, its only customer outside of Rhode Island. (R. 87.) The Narragansett Company had 31,375 customers in 1917 and 71,554 in 1923. (R. 287.)

The contract rate was 8.57 mills per kilowatt hour. (R. 264.) This rate was to be subject to increase or decrease for certain variations from a base price for coal. It was subject to decrease if any discovery, invention or improvement in electrical machinery should be made or any other method of generating or obtaining electrical energy should be discovered or adopted which would cause a material reduction in the cost of supplying electrical energy. Equitable adjustments were to be made when taxes imposed or removed materially increased or decreased the cost to the Narragansett Company of generating or otherwise obtaining or delivering electrical energy. The contract contained no provision for increasing the rate other than that which might result from an increase in the price of coal or from an apportionment of taxes.

The Narragansett Company on May 14, 1917, filed with the Commission its rate schedule R. I. P. U. C. No. 68 (R. 31-32; 275), which stated the contract rate to the Attleboro Company, and requested the Commission to allow the rate to go into effect at once. By order No. 335, dated May 23, 1917 (R. 390), the Commission authorized the Narragansett Company to grant the special resale rate, shown in schedule R. I. P. U. C. No. 68, to the Attleboro Company.

As a consequence of economic changes wrought by the world war the contract became extremely burdensome to the Narragansett Company involving it in a yearly operating loss without any return whatever upon its investment. (R. 400-403.)

April 6, 1921, the Narragansett Company filed with the Commission schedule R. I. P. U. C. No. 101 (R. 33-34; 391-393) which contained a new schedule of special rates for current furnished to the Attleboro Company. On April 27, 1921, the Commission, after a hearing, at which the Attleboro Company appeared only to protest, made an order approving the new schedule. (Order No. 584; R. 394-395.)

The Attleboro Company refused to pay the new rate. The Narragansett Company threatened to cut off the current unless the new rate was paid. In July, 1923, the Attleboro Company filed a bill in equity in the United States District Court for the District of Rhode Island against the Narragansett Company, asking for a mandatory injunction that the latter should continue to furnish current at the contract rate. After a full hearing and argument in October, 1923, the District Court, in an opinion by Judge Brown, filed February 12, 1924 (*Attleboro Steam & Electric Co. v. Narragansett Electric Lighting Co.*, 295 Fed. 895; R. 1-22), granted the injunction, on the ground that the order approving the new rate was not valid, because there had been no formal finding by the Commission, after formal notice and hearing, that the contract rate was unreasonable and ought to be superseded.

The Narragansett Company thereupon filed with the Commission a new schedule of rates. (Schedule R. I. P. U. C. No. 125, May 7, 1924; R. 29-30; 251-252; 395.) This new schedule of rates which in terms cancelled Schedules No. 68 (R. 275-276) and No. 101 (R. 391-393) was calculated to give substantially the same return as Schedule No. 101, but applied to all public utility customers purchasing more than a designated amount of current, and was in other respects amended and made more definite in order to meet objections of form that might be made to Schedule No. 101. (R. 23-26.) The Com-

mission, acting under Section 48 of the Public Utilities Act (see Appendix A, *post*, p. 85) upon suggestion of the Narragansett Company, ordered of its own motion an investigation of Schedule R. I. P. U. C. No. 125, at a public hearing, with notice by mail to the Narragansett Company and the Attleboro Company and by publication to the general public. (R. 27-42.)

In June, 1924, a formal public hearing was held. Counsel appeared for the Narragansett Company and for the Attleboro Company. Testimony was taken and arguments made in behalf of both companies. (R. 47-187; 188-222. See also Exhibits, R. 223-345.)

January 21, 1925, the Commission filed its opinion (R. 384-420) and made an order (No. 876; R. 420) that the rates contained in Schedule R. I. P. U. C. No. 68 were unjust, unreasonable, insufficient and unjustly discriminatory and in violation of the Public Utilities Act, that the rates contained in Schedule R. I. P. U. C. No. 125 were just and reasonable and were to become effective on all electricity delivered on and after February 1, 1925.

The Commission in its opinion (R. 384-420) recited and discussed the evidence at length and made findings which may be summarized as follows:

1. At the time the contract was submitted to the Commission for approval in 1917 it appeared to the Commission that the contract would result to the mutual benefit of both companies (R. 402-403.)

2. The Narragansett Company suffered in 1923 an operating loss of not less than \$4,326.03 without any return whatever upon the investment devoted to the Attleboro service and the probable operating loss in 1924 was not less than \$6,881.95 before any return upon investment. (R. 400.)

3. The aggregate loss to the Narragansett Company from serving the Attleboro Company for the term of the contract at the contract rates (Schedule No. 68) after a return of 8 per cent on the investment devoted to such Attleboro Company service, will not be less than \$1,500,000. (R. 400.)

4. The principal reason for the loss to the Narragansett Company under the contract is the sudden, substantial and permanent increase in the average unit cost of generating plant due to the increased costs which have followed the change of conditions resulting from the world war. (R. 403.)

5. The rates contained in Schedule No. 68 (the contract rates) are unjust, unreasonable, insufficient and unjustly discriminatory and preferential, and in violation of the Public Utilities Act of Rhode Island because they yield no return on the value of the property used by the Narragansett Company in rendering service to the Attleboro Company, while the rates, tolls and charges made by the Narragansett Company to its other customers yield a fair return on the value of the property used for such service. (R. 404.)

6. A continuance of service to the Attleboro Company under Schedule No. 68 will be detrimental to the general public welfare, and will prevent the Narragansett Company from performing its full duty towards its other customers. (R. 404.)

7. Under present conditions a return of approximately 8 per cent on the value of the investment devoted to the furnishing of service to the Attleboro Company is a reasonable return. (R. 419.)

8. Service by the Narragansett Company to the Attleboro Company under Schedule No. 125 will yield to the Narragansett Company approximately 8 per cent on the investment devoted by the Narragansett Company to the furnishing of such service. (R. 419.)

9. The rates contained in Schedule No. 125 are just, reasonable, sufficient and not unjustly discriminatory or preferential, or in violation of any of the provisions of the Public Utilities Act of Rhode Island for the reason that such rates, tolls and charges yield a fair return and no more than a fair return on the value of the property used for such service. (R. 419.)

10. The rates contained in Schedule No. 125 should be substituted for the rates contained in Schedule No. 68. (R. 419.)

Several of these findings are quoted verbatim under heading V of the Argument, *post*, pp. 62-64.

The Commission made the following statement of the method used by it in determining value of investment, upon the basis of which the above findings were made (R. 419) :

"In determining the value of the whole or any part of the investment or property of the Narragansett Company for the purpose of these findings the Commission has considered all relevant facts, including original cost, reproduction cost, money honestly and prudently invested, the par value of securities outstanding, the market value of securities outstanding, the sum required to meet operating expenses, and other facts which are relevant, all of which facts the Commission has after investigation and hearing and considering all the evidence and arguments of counsel, carefully considered and to each of which it has given due weight."

The Attleboro Company prosecuted an appeal to the Supreme Court of Rhode Island from Order No. 876 (R. 420) of the Commission, challenging the order and claiming it to be unlawful and void on various grounds.

On June 18, 1925, an opinion (R. 438) was handed down by Judge Stearns and a final decree was entered July 22, 1925 (129 Atl. 495; R. 448), by the Supreme Court of Rhode Island reversing Order No. 876 of the Commission which established the new rate (Schedule No. 125) and sustaining the appeal. The single ground for the decision was that Order No. 876 imposed a direct burden on interstate commerce and so constituted an improper interference by the State with interstate commerce upon authority of *Missouri et al. v. Kansas Gas Co.*, 265 U. S. 298.

The Public Utilities Commission of Rhode Island and the Narragansett Company brought in this Court a petition for a writ of *certiorari* to the Supreme Court of Rhode Island to review the above-mentioned decree and on October 26, 1925, this Court granted the petition. (269 U. S. 546; 46 Sup. Ct. Rep. 103; R. 450.)

SPECIFICATION OF ASSIGNED ERRORS.

1. Ruling that Order No. 876 was an improper interference by the State with interstate commerce.

2. Refusal to recognize that the chief business of the Narragansett Company is its local business in Rhode Island.

3. Refusal to recognize that only a small fraction of the total product of the Narragansett Company is sold to the Attleboro Company and that a very much greater proportion of the total product is sold direct by the Narragansett Company to consumers in Rhode Island.

4. Refusal to recognize that the Narragansett Company does no business outside of Rhode Island, that it delivers no electricity outside of Rhode Island, and that only a small proportion of the total product of the Narragansett Company is ultimately used in Massachusetts.

5. Failure to give recognition to the findings of the Commission that

(a) The rates, tolls and charges made by the Narragansett Company to its other customers yield a fair return on the value of the property used for such other service.

(b) The contract rate was unjust, unreasonable, insufficient and unjustly discriminatory and preferential and otherwise in violation of the Public Utilities Act of Rhode Island.

(c) A continuance of service to the Attleboro Company under the contract rate will be detrimental to the general public welfare and will prevent the Narragansett Company from performing its full duty towards its other customers.

(d) The rates contained in schedule No. 125 will yield a fair return and no more than a fair return on the value of the property used for the Attleboro service during the period of the contract.

(e) The rates contained in schedule No. 125 are just,

reasonable, sufficient and not unjustly discriminatory or preferential, or in violation of any of the provisions of the Public Utilities Act of Rhode Island.

(f) The rates contained in schedule No. 125 should be substituted for the rates contained in schedule No. 68.

6. Failure to give recognition to the fact that the Narragansett Company is operating under rights, locations and franchises from the State of Rhode Island and the municipalities thereof and to the fact that the Narragansett Company has at no time engaged in business outside the State of Rhode Island and has not been granted and has not enjoyed rights, locations or franchises outside the State of Rhode Island.

7. Refusal to recognize that the Attleboro Company in making the contract was chargeable with knowledge of the limited contractual powers of the Narragansett Company and that the latter company was subject to continuous regulation by the Commission in the interest of the public welfare of the State of Rhode Island in the absence of assertion by Congress of its paramount power to regulate interstate commerce.

8. Refusal to recognize that Order No. 876 is a regulation of local public service, that any incidental effect of such regulation upon interstate commerce was a necessary incident to the carrying out of such local public service regulation and consequently only an indirect burden on interstate commerce.

9. Refusal to recognize that the paramount interest is not national but local.

10. Refusal to recognize that this is not a case where equality of opportunity and treatment among the various communities and between the States concerned would be preserved by uniformity of governmental non-action but a case where the State should be free to prevent discrimination in a business essentially local.

SUMMARY OF ARGUMENT.

The argument will be presented under the following principal headings:

I. The order of the Commission is not an improper interference with interstate commerce (p. 16).

II. The fact that the old rates were embodied in a contract does not prevent regulation by the Commission. In fact both companies understood that the Commission would exercise authority over the contract (p. 41).

III. The Rhode Island Public Utilities Act as applied to the Attleboro Company is not unconstitutional as depriving the Attleboro Company of the equal protection of the laws (p. 50).

IV. The Commission had jurisdiction to make the order to which objection is taken (p. 56).

V. The Commission had power to fix for service to the Attleboro Company a rate yielding a reasonable profit on that service, and any less rate would be an unlawful discrimination (p. 62).

VI. The order of the Commission is supported by the evidence (p. 73).

ARGUMENT.

I.

THE ORDER OF THE COMMISSION IS NOT AN IMPROPER INTERFERENCE WITH INTERSTATE COMMERCE.

The sale of electric current by the Rhode Island Company to the Massachusetts Company is a transaction in interstate commerce, notwithstanding the fact that the current is delivered at the State line. The sale may nevertheless be subject to regulation by Rhode Island, in the absence of congressional action on the subject.

It is often said that whether interference with interstate commerce by a State, in the absence of Federal legislation, is allowable or not, depends on whether the interference is *direct* or *indirect*. While the correctness of this statement is indisputable, the distinction between direct and indirect interference is impossible to define in general terms, and in many cases difficult to apply; often it seems to be a matter of degree.

Another rule is constantly laid down by this Court, which is frequently of more practical value in determining whether the interference by the State is proper or improper.

" . . . there are certain subjects having the most obvious and direct relation to interstate commerce, which nevertheless, with the acquiescence of Congress, have been controlled by state legislation from the foundation of the Government *because of the necessity that they should not remain unregulated and that their regulation should be adapted to varying local exigencies*. . . . Our system of government is a practical adjustment by which the National authority as conferred by the Constitution is maintained in its full scope without unnecessary loss of local efficiency. Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the State appropriately deals in making reasonable

provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power." (*Italics ours.*)

Minnesota Rate Cases, 230 U. S. 352, 402-403.

"The rule which the plaintiff in error invokes is not an arbitrary rule, with arbitrary exceptions, but is one that has its basis in a rational construction of the Commerce Clause. As repeatedly stated, it denies authority to the States in all cases where the subject is of such a nature as to demand that, if regulated at all, its regulation should be through a general or national system, and that it should be free from restraint or direct burdens save as it is constitutionally governed by Congress; and on the other hand, *as to those matters which are distinctly local in character* although embraced within the Federal authority, the rule recognizes the propriety of the reasonable exercise of the power of the States, in order to meet the needs of suitable local protection, until Congress intervenes." (*Italics ours.*)

Wilmington Transportation Co. v. R. R. Comm. of California, 236 U. S. 151, 154-155.

In *Port Richmond and Bergen Point Ferry Co. v. Board of Chosen Freeholders of Hudson County*, 234 U. S. 317, a New York corporation ran a ferry between New Jersey and New York. A New Jersey county board prescribed the rates for transportation from New Jersey to New York. This Court held that this was not an improper interference with interstate commerce.

". . . the question is whether, with regard to rates, there is any inherent necessity for a single regulatory power. . . . It has never been supposed that because of the absence of Federal action the public interest was unprotected from extortion and that in order to secure reasonable charges in a myriad of such different local in-

stances, exhibiting an endless variety of circumstance, it would be necessary for Congress to act directly or to establish for that purpose a Federal agency." (Page 332.)

In that case there was a regulation of rates—not a provision for the public safety such as often has been allowed where a regulation of rates was forbidden—and the rates were for interstate transportation, a matter which in general is less appropriate for local regulation than is the sale of commodities. (On this point see authorities quoted below pp. 34–40.) In *Sault Ste. Marie v. International Transit Co.*, 234 U. S. 333, it was held that a State could not impose a license tax on the operation of a similar ferry, although the tax was not found to be unreasonable. A license tax may be no more direct an interference with commerce than the regulation of rates, but its purpose and nature is inherently different.

In the present case, the Rhode Island Commission has regulated the charges made by the Narragansett Company, a Rhode Island public utility, for electricity sold to the Attleboro Company, and delivered at the State line, for use in Massachusetts. The regulatory order establishes rates for customers taking more than a certain amount of current of a particular character. As applied to the Attleboro Company (which is in fact the only customer at present falling within this class) the order has the effect of increasing the rates established by a contract made between the Narragansett Company and the Attleboro Company.

Much the greater part of the business of the Narragansett Company is the furnishing of electric current to consumers in Rhode Island.

The Commission found that the Narragansett Company was suffering a net operating loss in furnishing electricity to the Attleboro Company at the contract rate, without reckoning any return upon its investment, and a very large loss taking into account a proper return on its investment. (R. 399–400, and statement of facts, *ante*, p. 10.) The decision of the Commission continues:

"The Commission further finds that a continuance of service to the Attleboro Company under said schedule No. 68 [the contract rate] will be detrimental to the general public welfare, and will prevent the Narragansett Company from performing its full duty towards its other customers." (R. 404.)

There is no discrimination against interstate commerce or the Attleboro Company; and the rates established are in themselves reasonable. So far as these points are not admitted by the Attleboro Company, they will be noticed below. They are not involved in the principal argument for that Company. Nor does that argument depend on the existence of a previous contract as to rates. The power to regulate rates, where it exists at all, includes the power both to lower and to raise existing rates, and the existence of a contract does not usually affect this power; that it does not do so in the present case will be shown below. See heading II p. 41. The main contention of the Attleboro Company is that any action of the Commission in regulating the rates for sale of current destined for use outside the State is an improper interference with interstate commerce.

It is believed that the present case is the first to come before this Court concerning the distribution of electric current. In *Mill Creek Coal & Coke Co. et als. v. Public Service Commission*, 84 W. Va. 662; 100 S. E. 557; P. U. R. 1920 A, 704, the Supreme Court of West Virginia treated the transmission and sale of electric current by a public utility company as analogous to the transmission and sale of gas, and this view is generally accepted. The only difference which might have any bearing on the present case is that with gas (at least natural gas), as with water and oil, the principal element of the cost of furnishing it to a customer is the cost of transportation, while with electricity the principal element is the cost of generating the current.

In *Pennsylvania Gas Co. v. Public Service Commission et al.*, 252 U. S. 23, brought before this Court by writ of error to

the Court of Appeals of the State of New York, a gas company, incorporated in Pennsylvania, transported natural gas from Pennsylvania to points in New York and sold it directly to local consumers there. The New York Public Service Commission established rates for such sales, and its action was upheld by the State Court. The Court said:

"We think that the transmission and sale of natural gas produced in one State, transported by means of pipelines and directly furnished to consumers in another State, is interstate commerce. . . ." (Page 28.)

Nevertheless the action of the New York Commission in fixing rates was upheld. The Court said:

"In dealing with interstate commerce it is not in some instances regarded as an infringement upon the authority delegated to Congress, to permit the States to pass laws indirectly affecting such commerce, when needed to protect or regulate matters of local interest. Such laws are operative until Congress acts under its superior authority by regulating the subject-matter for itself." (Page 29.)

The Court then quoted from the *Minnesota Rate cases*, including the passage quoted above, and further said:

"This local service is not of that character which requires general and uniform regulation of rates by congressional action, and which has always been held beyond the power of the States, although Congress has not legislated upon the subject. While the manner in which the business is conducted is part of interstate commerce, its regulation in the distribution of gas to the local consumers is required in the public interest and has not been attempted under the superior authority of Congress.

"It may be conceded that the local rates may affect the interstate business of the Company. But this fact does not prevent the State from making local regulations of a reasonable character. Such regulations are always sub-

ject to the exercise of authority by Congress enabling it to exert its superior power under the commerce clause of the Constitution." (Page 31.)

The Pennsylvania Company does not appear to have carried on any wholesale business in New York.

In *Mill Creek Coal & Coke Co. et als. v. Public Service Commission*, 84 W. Va. 662; 100 S. E. 557; P. U. R. 1920 A, 704, the West Virginia Court applied the same principles to a case of the sale of electric current, where the situation was substantially the same as in the *Pennsylvania Gas* case, the electric current being generated in Virginia and sold to local consumers in West Virginia.

In the present case it is impossible for the Rhode Island Commission to exercise effectively its power to regulate the rates for electricity furnished to local consumers, without also regulating the rates for other service furnished by the Narragansett Company. On that ground the regulation of such other service should be allowed, even though it incidentally affects interstate commerce.

If the Narragansett Company is obliged to continue furnishing electricity to the Attleboro Company at a loss, that obligation will tend to increase the burden on the local consumers, and to impair the ability of the Company to give good service at fair prices to such consumers.

The question is whether there exists, under all the circumstances of the present case, a sufficient occasion for state regulation of rates, notwithstanding the fact that there is some interference with interstate commerce. As Congress has not legislated on the subject, the point practically at issue is whether it is on the whole better that there should be *state regulation or no regulation at all*.

Apart from other circumstances favoring the power of the State of Rhode Island to regulate rates in this case the fact that the Rhode Island Commission cannot secure proper service at fair prices to the local customers of the Narragansett

Company unless it has the power to regulate the rates for electricity furnished to the Attleboro Company, and any other future customers of the same class, shows by itself the practical necessity for regulation of these rates.

The fundamental principle in public utility rate regulation is that each class of customers shall contribute fairly to the expenses, and to the return upon the capital, of the utility. If one does less than his fair share, others must do more than their fair share. The discrimination which otherwise results is clearly brought out by the Supreme Court of West Virginia in the recent case, above cited, in which the Court said, referring to the contention that a price fixed by contract was beyond the power of the Commission to increase:

"That would result in discrimination of the worst type, when the service rendered by a utility is required by law to be without discrimination. The Commission might authorize a rate, which, according to its estimate, would yield a reasonable return, but those who were so fortunate as to possess contracts with the utility would be entirely without the scope of such order, and would pay for the service at a rate lower than is paid by those subject to the Commission's order. The resulting difference between the estimated and actual yield would necessarily be made up by a still higher rate to be paid by those not holding such contracts."

Mill Creek Coal & Coke Co. v. Pub. Serv. Commission,
84 W. Va. 662, 678; 100 S. E. 557; P. U. R. 1920
A, 704, 719-720.

"The fixing of rates by a public utility with a part of the public often affects the rest of the public. If service to some of the public is furnished at less than a proper cost, it is quite probable that others dependent on the public utility may suffer either from inadequate or too expensive service."

East Providence Water Co. v. Public Utilities Commission et al., 128 Atl. 556, 558 (R. I.).

" . . . any contract that the city of Charlotte may have for a lower rate must yield to the public interest and requirement as expressed in this authoritative judgment of the Commission.

"Not only is the judgment of his Honor sustained by the principle more directly involved, but any other ruling in its practical application would likely and almost necessarily offend against the principle which forbids discrimination on the part of these companies towards patrons in like condition and circumstance. If a *quasi*-public company of this kind could evade or escape regulation establishing fixed rates that are found to be reasonable and just by making long-time contracts or other [*sic*], this regulation might be made to operate in furtherance of the very evil it is in part designed to prevent."

Re Southern Public Utilities Co., 179 N. C. 151, 161; 101 S. E. 619; P. U. R. 1920 C, 907, 918.

The reason why discrimination in favor of one customer is objectionable is that it tends to cast a greater burden on other customers.

State regulation by means of public service commissions already extends to many sorts of interstate commerce conducted by public utilities, which might be regulated by Congress. See, for instance, the *Pennsylvania Gas* case and the *Mill Creek Coal Company* case, *supra*. There is nothing to show that state regulation works badly with respect to the business of furnishing electrical power. On the contrary, the present Secretary of Commerce, Mr. Hoover, has pronounced it satisfactory, in an address delivered June 17, 1925, before the National Electric Light Association upon the subject of "State versus Federal Regulation in the Transformation of the Power Industry to Central Generation and Interconnection of Systems". (*Electrical World*, vol. 85, pp. 1309, 1310; issue of June 20, 1925, No. 25.) Mr. Hoover said:

"During the past year the Department of Commerce

has been engaged upon a study into the effectiveness and the results of state regulation of the industry. Few people seem to realize the fullness, the extent and the authority of the regulation now in effect. It is scarcely necessary for me to say that there is either state or municipal regulation of the rates of electrical utilities in all but two of the states and of service in all but five of the states. The financial operations of such utilities are supervised and controlled in a large majority of the states. These principles are being rapidly extended over the few remaining states.

"No one can survey the work the the State commissions and the instructive series of court decisions concerning their rulings as a whole without realizing that we are gradually developing a science of regulation and of understanding on one hand of the means of drawing the fine line between minimum rates to the people and on the other hand of such a reasonable profit to the industry as will stimulate its advancement. It is my belief from this investigation that the Public Service Commissions with very little just criticism are proving themselves fully adequate to control the situation. The laws as written in the state statute books are sufficient to protect both the public and the industry, the two parties to the utility contract." (Page 1310.)

In the case of companies doing principally a local business, it is obvious that the regulation of rates can be better made by a local authority than by a Federal commission. The situation in such cases resembles in many respects *Port Richmond and Bergen Point Ferry v. Board of Chosen Freeholders of Hudson County*, 234 U. S. 317. See the passage quoted above, pp. 17-18, from page 332 of the opinion in that case. The rates there regulated were for transportation, a subject less suited to local regulation than the sale of commodities.

When this same controversy, at an earlier stage (see state-

ment of facts p. 9, *supra*), came before the District Court in Rhode Island, Judge Brown said:

"As it is apparent that losses upon contracts for the delivery of electrical energy for use outside the state might affect the financial ability of the Narragansett Company to render service in Rhode Island at reasonable rates, and that there might thus result a discrimination in rates which would be unfavorable to residents of Rhode Island and favorable to the residents of Massachusetts engaged in the same lines of industry, we should be reluctant to accept the contention that, though the corporate capacity of the Narragansett Company to contract with citizens of Rhode Island is plainly limited and subject to legislative control through the Public Utilities Commission, yet in making contracts with corporations or citizens of contiguous or remote states for the supply of electricity generated in Rhode Island it is free from such control." (*Attleboro Steam & Electric Co. v. Narragansett Electric Lighting Co.*, 295 Fed. 895, 897; R. 1, 3.)

The Missouri Case.

The case on which the respondent will doubtless principally rely is *Missouri et al. v. Kansas Natural Gas Co.*, 265 U. S. 298 (hereafter the *Missouri* case). The opinion of the Rhode Island Court rests on its interpretation—mistaken, we think, of this case.

In that case the Kansas Natural Gas Company, a foreign corporation (called in the opinion the Supply Company), transported gas from outside of Kansas and sold it at wholesale to public utility companies in that State. This Court held that the Kansas Public Utilities Commission could not regulate the rates at which the gas was thus sold, distinguishing the *Pennsylvania Gas Company* case on the ground that the Pennsylvania Company sold directly to local consumers, while the Kansas Company carried on a business which was practi-

cally all interstate, and only at wholesale. The Court there said:

"The business of the Supply Company, with an exception not important here, is wholly interstate. The sales and deliveries are in large quantities not for consumption but for resale to consumers." (Page 306.)

"But here the sale of gas is in wholesale quantities, not to consumers, but to distributing companies for resale to consumers in numerous cities and communities in different States. . . . *The paramount interest is not local but national*, admitting of and requiring uniformity of regulation. Such uniformity, even though it be the uniformity of governmental nonaction, may be highly necessary to preserve equality of opportunity and treatment among the various communities and states concerned." (Pages 309, 310. Italics ours.)

In our case the business of the Company is chiefly intrastate, not interstate. The paramount interest is local, not national.

The purpose of the attempted regulative action by the receiving State in the *Missouri* case was to keep down the wholesale price of gas brought from outside the State. It was an attempt made by the State where the gas was received. The receiving State had the right to regulate its own local companies, to which the foreign Supply Company sold its gas, for the benefit of the local consumers, but not to regulate a foreign company doing exclusively an interstate wholesale business in that State. The price charged by the foreign company was an element in the cost to the local companies of supplying gas to the consumers, which was beyond the power of the Commission of the receiving State to control, and had to be taken into account, like the price of coal, in reckoning reasonable rates for the local company.

If there were any Federal commission having authority to regulate rates for the service to the Attleboro Company, it

would allow the Narragansett Company to charge remunerative rates. It would do exactly what the Rhode Island Commission has done. But there is no such Federal commission.

That the Kansas Commission, in the *Missouri* case, and the Massachusetts Commission here, should be without authority to regulate the sale at wholesale of gas or electricity brought into the State from without the State, but that nevertheless the Rhode Island Commission should have authority to regulate the sale of electricity generated in Rhode Island and sold in Rhode Island to one Massachusetts Company by a Rhode Island Company whose chief business is Rhode Island business is a perfectly reasonable distinction.

"The line of division between cases where, in the absence of congressional action, the State is authorized to act, and those where state action is precluded by mere force of the commerce clause of the Constitution, is not always clearly marked."

Missouri et al. v. Kansas Natural Gas Co., 265 U. S. 298, 307.

That line can and should be drawn right here. The balance between the considerations calling for local regulation and the considerations which call for freedom of interstate commerce from state interference can and should be struck so as to permit state regulation (in the absence of congressional action) in the present case, even though prohibiting it in cases similar to the *Missouri* case. Other cases may arise, intermediate between the present case and the *Missouri* case, as to which it is unnecessary to express an opinion.

The *Missouri* case does not decide that the Narragansett Company, if it did both retail and wholesale business in Massachusetts, might not be subject to regulation by Massachusetts with respect to all its business, on the ground that, in order to render the regulation of the local business effective, the wholesale business of the same company within Massachusetts must also be regulated. It might well be, if the Narragansett

Company actually entered the State of Massachusetts, and delivered its electricity there to both local consumers and public utility companies, that it would be subject to regulation by Massachusetts with respect to its wholesale business in Massachusetts. But that would be going much farther than is necessary in the present case, where the business of a Rhode Island company, which does not go out of Rhode Island, and enjoys rights, locations and franchises in Rhode Island only, is regulated by the Rhode Island Commission.

On the other hand, if the Narragansett Company generated electricity wholly, or principally, for use out of the State of Rhode Island, the power of the Rhode Island Commission to fix the price at which it should be sold for such use might be doubtful.

There is and can be no claim here that any discrimination is made against the interstate service because it is interstate. In the following cases, where the transmission of gas between states was declared to be free from the burdens which the states attempted to impose, the interstate commerce was of a wholesale character, and there was discrimination against it because it was interstate:

West v. Kansas Natural Gas Co., 221 U. S. 229;
United Fuel Gas Co. v. Hallanan et al., 257 U. S. 277;
Pennsylvania v. West Virginia, 262 U. S. 553, 597-598.

Galloway v. Bell.

A recent case containing *dicta* unfavorable to our contention is *Galloway et al. v. Bell et al.*, 11 F. (2d) 558, decided March 1, 1926, by the Court of Appeals of the District of Columbia. Petition for *certiorari* was denied by this Court on April 26, 1926, 46 Sup. Ct. Rep. 482. (No. 1057, October Term, 1925.)

That case involved the relations of two gas companies both called the Washington Gaslight Company, one incorporated in the District of Columbia and the other in Maryland, the District Company owning all the stock of the Maryland Com-

pany. The District Company delivered gas to the Maryland Company at the State line, and the latter Company sold to consumers in Maryland. Certain Maryland consumers brought a bill in the Supreme Court of the District, alleging that the Public Utilities Commission of the District had fixed a wholesale rate for the sale of gas by the District Company to the Maryland Company; that the District Company was identical with the Maryland Company; that the rate charged to the Maryland customers was higher than that charged to the District customers, and that such higher rates were a discrimination against the Maryland customers. The plaintiffs prayed that the wholesale rate fixed by the Commission for the gas delivered by the District Company to the Maryland Company be declared void; that the District Company be enjoined from charging such rate; that the Commission be enjoined from establishing any rate for such wholesale service to the Maryland Company; and that the Maryland Company be enjoined from increasing its rates.

The Supreme Court of the District dismissed the bill, and the Court of Appeals affirmed the decree on the grounds that the Commission had not attempted to establish any rates for the sale of gas by the District Company to the Maryland Company, and the District of Columbia courts could not attempt to control the rates charged by the Maryland Company in Maryland. It was unnecessary for the Court to say any more. The Court did, however, state that the Commission had no power to fix a rate for the sale at the State line to the Maryland Company, because to do so would be an improper interference with interstate commerce. This *dictum* is made the subject of the headnotes in the report, without regard to the circumstance that the point was not necessary for the decision.

Even if the Commission had fixed a charge for interstate transmission of gas, and such charge had been unconstitutional, the bill would have had to be dismissed. The Maryland customers had no right to relief in the District of Colum-

bia courts against either of the Companies or against the District Commission; and the Court so decides.

That what was said on the point of interstate commerce was a *dictum*, and not an alternative ground of decision, is shown by the fact that the Court did not enjoin the Commission from establishing any rate for the delivery of gas to the Maryland Company. If the Court had not rested its decision squarely and exclusively on the grounds that there was no such order made by the Commission, and that the Maryland customers had no right to relief in the District of Columbia courts, it would have followed its remarks on the Commission's lack of jurisdiction by issuing such an injunction in accordance with the prayer of the bill.

Additional Factors.

Two circumstances in the present case, tending to justify state regulation, which, when added to the outstanding feature that it is not practicable for the State to regulate properly the local service of the Company without regulating also the service here in question, strengthen our argument for state regulation.

First. The Narragansett Company is a Rhode Island corporation, enjoying franchises conferred on it by that State.

Second. The rate here regulated was for the sale within the State of a commodity produced within the State, as distinguished from a rate for transportation.

It is unnecessary to inquire to what extent an interference with interstate commerce by a State would be justified by either of these additional circumstances taken by itself. The coincidence of the three elements favorable to state regulation certainly makes a stronger case for the State than would exist if any of them were absent. The problem being one of practical adjustment between the State and National powers, inevitably involving the balancing of various considerations of policy and convenience, a combination of several considerations may properly bring about a decision which would not be justified unless they were all present.

Because the Narragansett Company enjoys public franchises conferred by the State of Rhode Island, it is peculiarly subject to regulation by the Commission.

The Narragansett Company enjoys no rights, locations or franchises in or from the Commonwealth of Massachusetts. The regulation of the Narragansett Company is by the State which incorporated that Company. The business within Rhode Island has been fostered by special concessions, rights and franchises from that State and its municipalities during a period of forty-two years. During this whole period up to the time when the contract with the Attleboro Company became effective in 1917, the Narragansett Company had confined itself to local public service within the State of Rhode Island.

The basis for the subjection of the rates of a public utility to the test of reasonableness is the protection of that portion of the public who are served by the utility. A public utility company is held to have dedicated its private property to public use. The dedication is primarily for the use of its customers. In consideration of such dedication the Narragansett Company has been granted various rights, locations and franchises. The dedication of private property to public use has occurred only within the State of Rhode Island and the consideration has moved entirely from the State of Rhode Island and its municipalities, but the dedication includes the generating plant, etc., used both for the service within and the service outside of Rhode Island—the service to the 71,553 customers within the State and to the one customer outside. The public welfare demands reasonable regulation by Rhode Island of the one interstate service as well as of the service to the 71,553.

In the *Missouri* case the Supply Company enjoyed no such rights, locations or franchises in the regulating State. On the contrary, it was a foreign corporation doing a wholesale business only in Kansas and Missouri. These facts are stated in the concluding paragraph of the opinion as follows:

"That some or all of the distributing companies are operating under state or municipal franchises cannot affect the question. It is enough to say that the Supply Company is not so operating and is not made a party to these franchises by merely doing business with the franchise holders." (265 U. S. 298, 310.)

This language indicates, at least, that if the Company had been enjoying state franchises, that circumstance might have affected the decision. The District Judge, whose decision was affirmed by this Court, thought that the grant by the State of a public franchise to the Company would have been an important circumstance.

"Of course, it is contended that the Company has so far subjected itself, by bringing its product into the state, and by doing so through mains and certain instrumentalities that have been established and built for that purpose, that it has voluntarily submitted itself to the jurisdiction of the state, and that, notwithstanding the fact that this is interstate commerce, it is still subject to state regulation.

"I cannot indulge the contention that by the contract—by the supply contract which was made between the Kansas City Gas Company and the Kansas Natural Gas Company—the Kansas Natural Gas Company necessarily or impliedly became a party to the franchise, and therefore subject to the control of the state."

Missouri v. Kansas Natural Gas Co., 282 Fed. 341, 348.

A public utility company doing a local business, directly with consumers, ordinarily, and almost necessarily, obtains franchises from the State in which it does such business. On the other hand, a company bringing in a commodity from outside and doing no local business, but selling only at wholesale, often operates without any franchises. This Court in the opinion in the *Pennsylvania Gas* case referred to the enjoyment of franchises in the state of New York, in this language:

"The pipes which reach the customers served are supplied with gas directly from the main of the company which brings it into the State, nevertheless the service rendered is essentially local, and the sale of gas is by the company to local consumers who are reached *by the use of the streets of the city* in which the pipes are laid . . ." (Italics ours.)

Pennsylvania Gas Co. v. Public Service Commission et al., 252 U. S. 23, 31.

The operation under local franchises was a part of the situation of a company doing a local business, which evidently was in the minds of the Court. The New York Court of Appeals, in the same case, emphasized this consideration.

"The seller of most things has the right to sell at whatever price he will. This petitioner has lost that right by the acceptance of a public franchise in consideration of a public service. . . . The service is due to the state from which the privilege proceeds."

Re Pennsylvania Gas Co., 225 N. Y. 397, 409; P. U. R. 1919 C, 663, 671.

The Narragansett Company not only operates under local franchises, but enjoys its corporate existence only by virtue of its incorporation by Rhode Island. The power which this fact gives to the State to control the corporation does not enable it to interfere with interstate commerce in matters requiring national regulation. See *Colorado v. United States*, 46 Sup. Ct. Rep. 452, 455. But the circumstance that the corporation was chartered by Rhode Island is a weighty consideration in favor of allowing that State to regulate the affairs of the Company in all matters where the desirability of national regulation does not appear.

The above considerations show the desirability of state regulation in a case like the present. The following arguments, on the other hand, show the practicability of enforcing such regu-

lation without causing conflict between the authority of different states, or otherwise directly burdening interstate commerce.

The rate here involved constituted a sale price within the State of a commodity produced within the State, as distinguished from a transportation rate, and therefore was peculiarly subject to regulation by the State.

An unusual feature in this case is that the electrical current is delivered at the State line. The Narragansett Company generates the current at its plant in Rhode Island, transmits it to the State line, and there delivers it. The service is rendered solely in Rhode Island. Moreover, the rate sought to be regulated is the sale price of a commodity—not a transportation rate. The sale price of such a commodity, sold by a local public utility, differs from a transportation rate in interstate commerce in that such price is essentially of local concern, while a transportation rate in interstate commerce is essentially of national concern.

In *Re Pennsylvania Gas Co.*, 225 N. Y. 397; P. U. R. 1919 C, 663, affirmed 252 U. S. 23, the New York Court of Appeals, after reviewing the cases where regulation of interstate commerce by a state has been allowed, said:

“Dicta may, indeed, be quoted where the court, in sustaining police regulations, has observed, as if by way of contrast, that they did not involve the regulation of rates. . . . But in every case the rates in view were rates of transportation. That is a field where regulation, if there is to be any, must be uniform. A central authority must reconcile the clashing action of localities. What is within the police power of one state is equally in such circumstances within the police power of its neighbor. One cannot freely exercise its will without affecting at the same time the like freedom of another. In the phrase of Hobbes, there is need of ‘a common power to keep them in awe’. (Page 408.)

"We deal here with a different situation. There is here no regulation of transportation. . . . There is no regulation of a duty owing equally to two states. There is regulation of a duty owing to one of them alone. The seller of most things has the right to sell at whatever price he will. This petitioner has lost that right by the acceptance of a public franchise in consideration of a public service. . . . The service is due to the state from which the privilege proceeds. Until Congress shall intervene, it is, therefore, the police power of New York that controls the sale of gas to consumers in New York. There is no division of the power between New York and Pennsylvania. There is no more a division of power than when we regulate our fees for wharfage or our tolls for artificial water-ways. In these matters, protection of our own inhabitants is a duty that is ours and no one else's. The power may be displaced; but until displaced, it is undivided. Here, then, is the decisive distinction between the regulation of the price of gas and that of rates of transportation. There is no room for conflict of authority, for clashing regulations. The statute has a sphere of operation that is not national, but local. . . . It is idle to speak of the need of uniformity of action by states of equal competence when there is only one state whose action is involved." (Page 409.)

In *Mill Creek Coal & Coke Co. et als. v. Public Service Commission*, 84 W. Va. 662; 100 S. E. 557; P. U. R. 1920 A, 704, the reasoning of which was subsequently approved by this Court in the *Pennsylvania Gas* case, the Supreme Court of West Virginia at page 673 said:

"The vital distinction should be noted between regulation of rates of transportation and of the rates at which a commodity shall be sold. Transportation across state lines, involving as it frequently does many or all states, is generally a matter of national importance requiring uni-

formity of regulation respecting the rates thereof, and hence is usually beyond the regulatory power of the state. Because of the very nature of the subject matter conflicting state regulations respecting rates ordinarily would result in discord and chaos. There are instances, however, where even in such cases the regulatory power of the state has been sustained. . . .

"In fixing the rates of sale, however, as distinguished from rates of transportation, the duty regulated is of an entirely different nature. The duty of the power company to sell at reasonable rates was one owed both to citizens of Virginia and to the public in this state. But the two duties do not overlap, as they do where rates of transportation are concerned. The price at which a commodity is sold is essentially local, affecting chiefly those in the community where it is made, and only incidentally, if at all, touching those outside of the community. So long as the rate fixed is not discriminatory or confiscatory, but yields a fair return upon the valuation of the property, it throws no burden upon citizens of other communities or states." (Page 674.)

The sale price of most commodities, such as are not usually dealt in by public utility companies, is not a matter of governmental concern, either State or Federal. In the case of gas or electricity, sold by a public utility company, the price is subject to governmental regulation. The sale price of such a commodity admits of, and may require, State regulation, but it does not require, nor reasonably admit of, uniform Federal regulation.

Particularly is this true in the case of electricity, the sale price of which depends on the geographical and industrial features of the State concerned. Uniform sale prices for electric energy throughout the country, as the electrical industry is developed today, would be commercially impossible.

"But even within the state, diversity rather than uni-

formity is exacted by the conditions of the business. Rates adequate in one city are inadequate in another. The local needs are best known to local agencies of government. No central authority, acting for the nation as a whole, will readily discern them."

Re Pennsylvania Gas Co., 225 N. Y. 397, 409; P. U. R. 1919 C, 663, 671.

It may be suggested that in the present case two States are concerned because the electricity is produced in Rhode Island and destined for use in Massachusetts. It is true that this electricity is involved in interstate commerce and that certain sorts of interference by the State of Rhode Island with its transmission would be unlawful. But there is no room for conflict of authority in respect to regulation of rates at which it is thus sold. The State of Massachusetts could not claim to regulate the sale by the Narragansett Company in Rhode Island. The Narragansett Company is not doing business in Massachusetts, any more than if it delivered and sold the electricity to the Attleboro Company at a point in Rhode Island several miles from the State line. The fact that the current is subsequently transmitted into another State is important for some purposes; but it does not make the Narragansett Company do business in Massachusetts. See *Washington Water Power Co. v. Montana Power Co. et al.*, P. U. R. 1916 E, 144 (a decision of the Idaho Public Utilities Commission). As declared in that case (p. 158) the circumstance that the current is metered in the State of ultimate destination is immaterial.

The circumstance that the State of Massachusetts may properly regulate the rates for local distribution by the Attleboro Company involves no conflict of authority between Rhode Island and Massachusetts. The price of the electricity purchased by the Attleboro Company in Rhode Island is merely an element which would have to be taken into account by the Massachusetts Public Utilities Commission, like the price of

coal purchased in Pennsylvania, which might be affected by a Pennsylvania tax on the mining of coal.

If current were transmitted by the Narragansett Company to a point inside the State of Massachusetts and there sold to the Attleboro Company, a very different situation would arise. The electric current would be the subject of interstate commerce in either case; but with regard to the regulation of the sale by the States of Rhode Island and Massachusetts, the situation would be entirely different.

But the sale of the commodity in this case is made in the home State, and here lies a principal distinction between the *Missouri* case and the present one. In the *Missouri* case this Court said that the Kansas Company should have "equality of opportunity" in marketing its product in all States. (265 U. S. 298, 310.) Its rates should not be subject to multifarious regulation by all the different States where it might sell its product. But it does not follow that the producing company may not be subject to regulation by its home State of the prices at which it sells in that state to all customers, whether or not for subsequent use in another State. In the *Missouri* case, when commenting on the *Pennsylvania* case, this Court said that in that case "the things done were local and were after the business in its essentially national aspect had come to an end". (265 U. S. 298, 309.) In the present case, it seems that at the time of the sale of the current to the Attleboro Company the national aspect of the business transaction between the Narragansett Company and the Attleboro Company had not yet begun.

A distinction may be made between cases concerning the distribution of natural gas and those concerning the distribution of electric current, which favors the power of regulation by the states in the latter class of cases. In the case of natural gas the price at which it is sold is almost wholly based on the cost of transportation. See *Landon v. Public Utilities Commission, et al.*, 242 Fed. 658, 689, a case which was reversed in *Public*

Utilities Commission et al. v. Landon, 249 U. S. 236, on a different point. The District Court in that case said:

" . . . whenever a state, acting under the guise of fixing prices at which an article of interstate commerce brought into the state may be sold by the introducer upon its arrival at destination, in reality thereby necessarily fixes or regulates the rate of transportation of such article from its initial point to the point of destination, such action by the state in fixing the sale price is an attempt to directly burden and regulate interstate commerce, and is, therefore, unauthorized." (Page 690.)

This Court subsequently decided in the *Landon* case and the *Pennsylvania Gas* case, that the sale in local distribution of natural gas could be regulated by a State. See also *People's Natural Gas Co. v. Public Service Commission of Pennsylvania et al.*, 46 Sup. Ct. Rep. 371, decided April 12, 1926. The distinction above pointed out by the District Court tends to show that in the case of electric current the grounds for allowing regulation of sale prices by the home State are still stronger. Although this distinction was not mentioned by the Court in the *Missouri* case, it furnishes an additional ground for distinguishing that case from the present one.

In *Lemke v. Farmers' Grain Co.*, 258 U. S. 50, a State regulation of the sale of commodities was held to be an unlawful interference with interstate commerce. The defendant company there operated a grain elevator in North Dakota and purchased grain of neighboring farmers for shipment to markets which were almost entirely outside the State. A North Dakota statute provided, among other regulations of this business, for the fixing by a State official of the prices to be paid by the elevator company to the farmers. In the language of this Court: "This act shows a comprehensive scheme to regulate the buying of grain." (Page 56.) The Court held this regulation an unlawful interference with interstate commerce.

The principal distinction between the *Lemke* case and the

present one is that in the former the business of the public utility company was practically all interstate. But the nature of the business there was so entirely different from the furnishing of electricity, and the regulation so much more extensive, that analogies can scarcely be drawn between the cases. The regulation in the *Lemke* case was of the prices paid by the public utility company, not the prices charged by it. The commodity in question was not produced by a public utility, as is usually the case with electric current and gas. The persons to whom it shipped the grain were out of the State, but the farmers from whom it purchased were all in the State. The regulation of purchase prices was something novel, and entirely different from regulation of prices at which a commodity is sold by a public utility company. It was an extreme case of the exercise of the police power, even as applied to intra-state commerce. The Court did not cite the *Pennsylvania Gas* case.

In *Shafer et al. v. Farmers' Grain Co.*, 268 U. S. 189, a North Dakota statute providing for inspection, grading, etc., similar to what was required by the statute in the *Lemke* case, but without any fixing of prices, was held an unconstitutional interference with interstate commerce. The Court may well have felt in the *Lemke* case that the importance of the local interest in protecting the farmers against the middlemen did not justify a degree of interference with interstate commerce which was justified in the *Pennsylvania Gas* case by the local interest in securing fair charges in the sale of gas by a public utility company.

II.

THE FACT THAT THE OLD RATES WERE EMBODIED IN A CONTRACT DOES NOT PREVENT REGULATION BY THE COMMISSION. IN FACT BOTH COMPANIES UNDERSTOOD THAT THE COMMISSION WOULD EXERCISE AUTHORITY OVER THE CONTRACT.

The contract between the two companies was not protected against the exercise of the police power of the State by the clauses prohibiting the impairment of the obligation of a contract and guaranteeing equal protection of the laws and due process of law.

Union Dry Goods Co. v. Georgia Public Service Corporation, 248 U. S. 372.

See quotations from this and other cases in our brief before the Commission. (R. 361-364.)

Here the statute establishing the Commission was previous to the contract, although that point is not essential.

There is no doubt that the Rhode Island Legislature intended to give the Commission power to raise rates notwithstanding any contracts that might have been made.

East Providence Water Co. v. Public Utilities Commission et al., 128 Atl. 556 (R. I.).

The Attleboro Company contends that the approval of the contract rate by the Commission in 1917 created an implied contract between the Attleboro Company and the State, which cannot be set aside by the State as against the Attleboro Company without impairing the obligation of this alleged implied contract. (The schedule stating the rate filed by the Company May 16, 1917, appears in the Record, page 275, and the order approving it on page 390.)

This contention leads to a conclusion exactly opposite to the conclusion claimed by the Attleboro Company. It involves the assumption, which is the obvious fact, that the Attleboro Company made its contract with perfect understanding that the contract must be submitted to the Rhode Island Commission,

and would not become effective unless and until the rate was approved by the Rhode Island Commission. In substance, the Attleboro Company intended to and did subject itself to the jurisdiction of the Rhode Island Commission, so far as its right to the rate fixed by the contract is concerned. It did this knowing, in legal contemplation at least, that the approval of a rate by the Commission was not final, whether the rate was or was not a contract rate. It subjected itself first to the possibility that the Commission might not approve the rate originally; second, to the possibility that the Commission might later change the rate.

The Rhode Island Public Utilities Act, Section 33 (Appendix A *post* p. 80) provides that

"The commission may at any time upon notice to the public utility and after opportunity to be heard as provided in section twenty, rescind, alter, or amend any order fixing any rate, toll, charge, joint rate or rates, or any other order made by the commission. . . ."

If the two companies had made this interstate contract for sale of a commodity and never submitted it to the Rhode Island Commission, the Attleboro Company might fairly contest the jurisdiction of the Commission, but when the Narragansett Company, as was intended by both parties, submitted the contract to the Commission for approval of the rate, the Attleboro Company recognized the jurisdiction of the Commission and accepted the contract subject to its authority. It secured all the benefits resulting from the original approval, for the contract would never have gone into operation at all without that approval. It is estopped to contest the jurisdiction of the Commission in its later action with respect to the same contract rate.

But that this submission and approval created any contract with the State of Rhode Island is a conclusion almost too far fetched for argument.

There are certain cases where this Court has held that a contract was made as to rates between a public utility com-

pany and an agency of the State, usually a municipal corporation, which the State was prohibited from changing. See, for instance, *Detroit v. Detroit Citizens' Street Ry. Co.*, 184 U. S. 368. But in that same case the Court said:

"It may be conceded that clear authority from the legislature is needed to enable the city to make a contract or agreement like the ordinances in question including rates of fare." (Page 382.)

The authority to make such a contract must "unmistakably appear".

Home Telephone and Telegraph Co. v. Los Angeles, 211 U. S. 265, 273;

Milwaukee Electric Ry. & Light Co. v. Railroad Commission of Wisconsin, 238 U. S. 174, 180;

Public Utilities Commission v. Rhode Island Co., 43 R. I. 135; P. U. R. 1920 F, 687.

In the latter case the Court said at page 145, quoting with approval from *Milwaukee Electric Ry. & Light Co. v. Railroad Commission of Wisconsin* *ubi supra*:

"The fixing of rates which may be charged by public service corporations, of the character here involved, is a legislative function of the State, and while the right to make contracts which shall prevent the State during a given period from exercising this important power has been recognized and approved by judicial decisions, it has been uniformly held in this court that the renunciation of a sovereign right of this character must be evidenced by terms so clear and unequivocal as to permit of no doubt as to their proper construction. This proposition has been so frequently declared by decisions of this court as to render unnecessary any reference to the many cases in which the doctrine has been affirmed.' "

The principle involved was well stated by Mr. Justice Moody in *Home Telephone and Telegraph Co. v. Los Angeles*, 211 U. S. 265, 273:

"The surrender, by contract, of a power of government, though in certain well-defined cases it may be made by legislative authority, is a very grave act, and the surrender itself, as well as the authority to make it, must be closely scrutinized. No other body than the supreme legislature (in this case, the legislature of the State) has the authority to make such a surrender, unless the authority is clearly delegated to it by the supreme legislature."

See also: *Salt Lake City et al. v. Utah Light & Traction Co.*, 52 Utah 210, 223; P. U. R. 1918 F, 377.

Brooklyn Union Gas Co. v. Prendergast, 7 F. (2d) 628.

Moreover, the intention of the government agency to exercise this authority if it has the power to do so, must unmistakably appear.

Paducah et al. v. Paducah Ry. Co., 261 U. S. 267, 272-275.

See 33 Harvard Law Review, 97-102.

In the present case, the intention of the Legislature to confer such an authority on the Commission, and the intention of the Commission to exercise it, are both so far from appearing unmistakably that their existence is purely a matter of inference. The statute says nothing of such a power in the Commission. The order says nothing as to the continuance of the rate.

Under the language of section 42 (b), of the Rhode Island Act (Gen. Laws, R. I., c. 253, Appendix A, *post*, p. 84), under which section the Commission acted in approving the contract rate, no justification can be found for the creation of any obligation binding upon the State. Section 42 (b) allows a utility, with the approval of the Commission, to grant special rates to any special class or classes of persons, "in cases where the same shall seem to the commission just and reasonable, or required in the interests of the public, and not unjustly discriminatory". In view of the general scope and purpose of

the Utilities Act, as shown especially in sections 38 to 41, inclusive, it is evident that section 42 (b), was intended to permit special rates only so long as they were just and reasonable. If the Commission's approval were taken as preventing any change of the rates during the life of the contract, there would be a likelihood that when conditions had changed the continuing rates would contravene the provisions against discrimination, preference and rebates. The Legislature cannot be deemed to have intended such a result. See *East Providence Water Co. v. Public Utilities Commission et al.*, 128 Atl. 556 (R. I.).

Judge Brown recognized the statutory power of the Commission (R. 2) :

"As the Rhode Island 'Public Utilities Act', Public Laws 1912, Chapter 795, was in force before the making of the contract of May 8, 1917, and as the Narragansett Electric Lighting Company was within the term 'public utility' as defined by that act, the Attleboro Company had full notice that it was dealing with a Rhode Island Corporation of limited power to contract, and subject to continuous regulation in the public interest through an administrative legislative agent, the Public Utilities Commission."

The Supreme Court of Rhode Island in the decision under review recognized the statutory power of the Commission otherwise it would not have passed on the interstate commerce question.

The opinion and uniform practice of the Commission should be allowed much weight on a question of its own powers. The Commission said (R. 402-403) :

"The Commission has always construed such approval as authority for the utility to render service to a consumer of a special class at the rate contained in the schedule approved and under the terms of the contract, until further order of the Commission.

"We do not believe that it is the intent of the law that the approval of the Commission should preclude the Commission from further jurisdiction over such a rate in the public interest.

"If such is the intent of the law, the Commission would feel that such authority should be little, if ever, exercised.

"In this particular case it appeared to the Commission at the time the schedule was submitted for approval that the supply of electric energy by the Narragansett Company to the Attleboro Company under the contract and schedule was to the mutual benefit of both companies, offering to the former a large consumer at an average profitable rate during the terms of the contract, and to the latter a dependable supply of energy at a cost which the latter company must have considered lower than its own cost would be under independent operation. The other consumers could also anticipate a lowered cost of production to the Narragansett Company by reason of the increased load upon the central station.

"The principal reason for the loss to which the Narragansett Company is subjected with reference to this rate schedule and contract is due to the sudden, substantial and permanent increase in its average unit cost of generating plant, due to the increased costs which have followed the change of conditions resulting from the world war."

The reason why the Commission in 1917 did not expressly state that its order approving the schedule submitted would be in force only until further order, was that it assumed that all its orders were understood to be made subject to an implied condition to that effect.

Even supposing, however, that a contract was made between the State, acting through the Commission, and the Narragansett Company, such that if the State had attempted to compel that Company to lower its rates for the service covered by that schedule, it could have successfully objected, the Attleboro

Company would have acquired no rights under that contract. The supposed irrevocable contract would be one between the Narragansett Company and the State, to which the Attleboro Company would not be a party. Certainly the State did not make a contract with the Narragansett Company for the benefit of the Attleboro Company. The Narragansett Company now asks to have the rate changed and the State, through the Commission, consents. The obligation of the contract (if there is any contract) is not impaired when both parties to it consent to its modification.

Almost all cases where the courts have found an irrevocable contract, were cases of contracts between a municipal corporation and a public utility, which the State subsequently attempted to impair by ordering lower rates. *State v. Marshall*, 98 Ohio St. 467, is peculiar, in that the contract between the municipality and the utility was expressly made conditional on the approval of the Commission, and received that approval.

The opinion was rendered *per Curiam* and is ambiguous in its statement that the Commission, on motion of the utility, had no power or authority to open up and set aside its order approving the contract. (Page 468.) The language used is, however, clarified by the opinion in another case, decided on the same day, under the municipal home rule section of the Constitution of Ohio (Section 3 of Article XVIII, as amended September 3, 1912.) *Cleveland Telephone Co. v. Cleveland*, 98 Ohio St. 358. In the latter case at page 385 the Court points out that the municipality involved in *State v. Marshall*, *supra*, had adopted a home rule charter under the constitution and that

“ . . . the contract of settlement between the city and the utilities named, in pursuance of which the order of the utilities commission was entered, was and is a binding and subsisting contract between the parties thereto, and for that reason the utilities commission has no authority to change the rate fixed by that contract during its term.”

During the period covered in the *Marshall* case Ohio had

statutes giving municipal councils power to regulate the price of electricity or gas (General Code, Section 3982) provided the price fixed, when the utility makes written acceptance, shall not be reduced during the period agreed upon, such period not to exceed ten years (General Code, Section 3983) and giving municipal corporations authority to contract to purchase electricity or gas for municipal purposes (General Code, Section 3994). These statutes may or may not have been considerations influencing the decision of the court. The constitutional home rule provision may have been deemed controlling. In any event the case is not persuasive because the customer was a municipality and it does not appear that the particular kind of contract was, or under the State constitution could be made, subject to regulation by the commission. See Page's Annotated Ohio General Code, Section 614-44, and cases cited thereunder and Ohio Constitution, Article XVIII, Section 4, as amended September 3, 1912.

The only case which has been cited, where a Commission fixed a rate to continue for a limited period, and this action by the Commission was held to constitute a contract between the utility and the State, which prevented the State from subsequently changing the rate, is *New York & Queens Gas Co. v. Prendergast*, 1 F. (2d) 351. The Court there held that the rate established by the Commission could not constitutionally be lowered by the express action of the Legislature within one year. Two quotations will show how totally different that case was from this:

"By section 72 of the Public Service Commission Law, the Legislature empowered the commission to fix the rate to be charged by a gas corporation, and also to establish a period, not exceeding three years, during which the rate so fixed shall at all events continue in effect, and thereafter until the commission shall fix a different rate. The Court of Appeals of the state of New York, in *Saratoga Springs v. Saratoga Gas Co.*, 191 N. Y. 123, referring to

this statute, says that it contemplates the fixing of 'a period of repose during which the rate should remain stable'. This view has been generally accepted throughout the history of commission regulation, to the end that for a limited time the rate so fixed may not be disturbed, over the objection, on the one hand, of the company, or, on the other hand, of any party to the proceeding which resulted in the order.

"The Public Service Commission fixed the rate and thermal content, to take effect October 1, 1922, and to continue until the 30th day of September, 1923." (Page 375.)

III.

**THE RHODE ISLAND PUBLIC UTILITIES ACT AS APPLIED TO
THE ATTLEBORO COMPANY IS NOT UNCONSTITUTIONAL
AS DEPRIVING THE ATTLEBORO COMPANY OF THE EQUAL
PROTECTION OF THE LAWS.**

The suggestion has been made that the Public Utilities Act of Rhode Island is unconstitutional, as depriving the Attleboro Company of the equal protection of the laws, because the Attleboro Company enjoys no corresponding benefits under it. The contention is that the Attleboro Company, being a foreign corporation, has no right to file a complaint with the Commission, and therefore is subjected to the burdens of the statute without deriving any benefit from it.

In discussing this question the following points should be borne in mind:

First: The Attleboro Company is not a public utility for the purposes of this Rhode Island statute. See opinion of the Rhode Island Supreme Court in this case, R. 442, also 129 Atl. 495; P. U. R. 1925 E, 495. It is simply one of the consuming public, that requires a large amount of electric current of a particular description.

Second: The Order complained of (R. 420) establishes a rate for a class of consumers which may include any number of persons, and either foreign or domestic corporations. No claim is made that this rate is too high in comparison with the general schedule of rates applicable to other customers. It is unnecessary to consider whether the Act would authorize an order establishing a rate for a particular person only, or whether such an order would be open to constitutional objections.

Third: The Attleboro Company in fact had notice of the proceedings of the Commission, and fully presented its case. No point can be raised that the Act did not give it an opportunity to be heard.

Tyler v. Judges of Court of Registration, 179 U. S. 405;

Louisville & N. R. R. v. Finn et als., 235 U. S. 601, 609.

Fourth: In constitutional questions of this sort, the Court regards not so much the technical details of a statute as its practical operation.

Stone v. Farmers' Loan & Trust Co., 116 U. S. 307, 335-336;

New York, New Haven & Hartford R. R. v. New York, 165 U. S. 628, 633;

Chicago, Rock Island & Pacific Ry. Co. v. Arkansas, 219 U. S. 453;

See: *Home Telephone & Telegraph Co. v. Los Angeles*, 211 U. S. 265, 280-281.

The Public Utilities Act (Gen. Laws of R. I., c. 253, Appendix A, *post*) provides for complaints to the Commission as follows: "Sec. 18. Upon a written complaint made against any public utility by any city or town counsel, or by any corporation, or by any twenty-five qualified electors that any of the rates, tolls, charges, or any joint rate or rates of any public utility are in any respect unreasonable or unjustly discriminatory", the Commission shall proceed to make an investigation.

"Any corporation" in this section includes foreign corporations. Section 2 of the Act provides: "The term 'corporation', when used in this chapter, includes a corporation, company, association, and joint stock company or association." Nothing is said limiting the scope of the Act to domestic corporations. If the Attleboro Company came before the Commission as a public utility it might be a material question whether it was a foreign or domestic corporation, and whether it operated a plant within the State of Rhode Island. But it comes before the Commission only as a consumer. No reason appears why

a foreign corporation should not stand on the same footing, in the character of a consumer, as a domestic corporation.

The Act does not give the right of complaint to every consumer. It gives such a right to municipal bodies, to twenty-five electors acting together, and to any corporation. It is true that it does not give the right of complaint to an individual non-resident, but neither does it give such a right to an individual resident, nor even to every group of twenty-five. Minors are not electors, and until recently women were not. It is assumed that the interests of any community or class will be sufficiently protected by a group of twenty-five electors representing that community or class, or by some municipal body. The case of a non-resident individual customer would be rare, and his interests would be as well looked after by the representative group of responsible customers as if he were a resident. It would be difficult to provide for special representation of non-residents by a group. A corporation, on the other hand, is given a right to complain alone, presumably because its interests are apt to be larger and it in reality represents the interests of a number of shareholders. A foreign corporation would be more likely to be a customer than an individual non-resident. There may be many foreign corporations, having manufacturing plants within the state, which are larger users of power. As much reason exists for allowing a foreign corporation to file a complaint alone as in the case of a domestic corporation.

The Attleboro Company cannot raise the point that the statute might be unconstitutional in its application to some other person, such as an individual non-resident.

Castillo v. McConnico, 168 U. S. 674, 680;

Lee v. New Jersey, 207 U. S. 67;

Hendrick v. Maryland, 235 U. S. 610, 621;

Roberts & Schaefer Co. v. Emmerson, 46 Sup. Ct. Rep. 375.

Whether the term "corporation", when used in a statute, in-

cludes a "foreign corporation" is a question of the interpretation of the whole statute. There have been decisions both ways, according to the nature and purpose of the statute.

Where it is a question of conferring a franchise on a corporation, it may be held that only domestic corporations are included.

Commonwealth v. Boston, 97 Mass. 555.

Where it is a question of the formalities of bringing suit against a corporation, or serving writs on it, the provisions appropriate for a domestic corporation may not be appropriate for a foreign corporation.

Potter v. Lapointe Machine Tool Co., 201 Mass. 557;
Sullivan v. LaCrosse and Minnesota Steam Packet Co., 10 Minn. 386.

On the other hand, in many cases on procedure, foreign corporations are held to be included.

Societe Fonciere v. Milliken, 135 U. S. 304;
Eagle Life Association v. Redden, 121 Ala. 346;
Cross v. Nichols, Shepard & Co., 72 Ia. 239;
Chicago B. & Q. Railroad v. Manning et al., 23 Neb. 552;
Plimpton et al. v. Bigelow, 29 Hun. 362.

Other cases where the word "corporation" was held to include a foreign corporation are:

Lewis et al. v. Bank of Kentucky, 12 Ohio 132;
Southern Life Ins. & Trust Co. v. Packer et al., 17 N. Y. 51.

In the present case, it is not a question of the grant of a special privilege to a corporation, or of the form of legal process appropriate for a non-resident, but of substantial justice to a party affected by the action of the Commission. Although in some circumstances a foreign corporation might not be subject to the jurisdiction of the Commission, in other cases it clearly would be so, as where a foreign corporation carried on a man-

ufacturing business in the State and was a consumer of gas or electricity there. The reasonable course for the Legislature would be to allow a foreign corporation to complain of the action of the Commission, or of a utility company, in the same manner as a domestic corporation. If the Commission acted in any case where it lacked jurisdiction to do so, then the foreign corporation could protect itself in the courts, without any complaint to the Commission. See *Market Street Railway Co. v. Pacific Gas & Electric Co.*, 6 F. (2d) 633, 639.

But even if the Attleboro Company could not have filed an original complaint under Section 18 of the statute, that does not necessarily make the statute unconstitutional as applied to the Attleboro Company. To draw such a conclusion would be to prove too much. It would destroy almost the whole jurisdiction of the Commission.

No single customer, no firm or other group of non-residents, and no group of residents, not comprising twenty-five electors, has a right to file an original complaint. It might easily happen that some group of customers, not able to fulfill that requirement, would be differently situated from any of their neighbors with regard to the service received from a public utility. It may be argued plausibly that every person ought to have a right to complain of discrimination against himself, whether or not any one else cares to complain. It is possible he may be singled out for discrimination.

The answer to these suggestions is that the statute in its practical operation sufficiently protects the interests of all consumers dealing with a public utility company, by the aggregate of its provisions for original complaints and for intervention by parties interested. All ordinary cases of controversies between public utilities are taken care of by investigations initiated by way of original complaint by the customer. The Commission has also power to initiate an investigation of its own motion, and notice thereof is to be given to such interested persons as the Commission shall deem necessary. (See. 28, *post* p. 80.) This Court construes statutes providing for

proceedings before a commission or board so as to require notice to all parties interested.

Paulsen v. Portland, 149 U. S. 30;

Wadley Ry. v. Georgia, 235 U. S. 651, 658.

Any person interested may be admitted by the Commission as a party, and thereafter acquires all the rights of an original complainant including the right of appeal.

Public Utilities Commission v. Providence Gas Co.,
42 R. I. 1; P. U. R. 1919 A, 783;

*Public Utilities Commission v. Narragansett Electric
Lighting Co.*, 129 Atl. 495 (R. I.) (the present case
in the Supreme Court of R. I.) R. 442.

The Attleboro Company is one of a class to whom a special rate is made applicable. Assume that it has no right to complain by itself. It is no worse off because it happens to be the only person in that class than it would be if it were a resident and elector in Rhode Island, and the class consisted of twenty-four electors and several non-residents, minors, and other persons not electors. Statutes of this sort are not unconstitutional because they do not expressly take care of all exceptional cases. Such cases are in fact taken care of by the practice of the Commission, as the Attleboro Company has been in fact amply protected by the Commission in this case.

Similar provisions limiting the right to make complaint to public utility commissions to groups varying from ten to one hundred in number are found in the following states:

Connecticut, G. S. § 3635;

Maine, R. S. c. 55, § 43;

See *In re Searsport Water Co.*, 118 Me. 382, 393;

Massachusetts Gen. Laws, c. 159, §§ 14, 24 ("20 legal voters"); c. 164, § 93;

New Hampshire P. L. c. 238, §§ 5, 6;

New York Public Service Commission Law, § 71;

Wisconsin Statutes 1921, § 1797m—43.

The above statutes will be found in Appendix C at the end of this brief, *post* pp. 96-101.

IV.

**THE COMMISSION HAD JURISDICTION TO MAKE THE ORDER
TO WHICH OBJECTION IS TAKEN.**

This point concerns only the intended scope of the statute, apart from constitutional limitations, which are discussed above. No Federal question is involved in this point.

The Supreme Court of Rhode Island decided that the order of the Commission was "an improper interference by the State with interstate commerce". (R. 442.) In this decision the Rhode Island Court assumed that the Commission was given jurisdiction to make such an order, except as prevented by the commerce clause, and by implication it so decided. It therefore proceeded to base its decision against the Commission upon a Federal ground. The State has acted only through the Commission. If the action of the Commission was an interference by the State, it must have been an action which the State attempted to authorize. If the Commission acted without any authority from the State, there would be no interference by the State. See *Palestine Telephone Co. v. Palestine*, 1 F. (2d) 349. We contend that the interference by the State through the Commission was proper. Our opponents contend it was improper. The issue is entirely on the Federal question.

An examination of the statute confirms the conclusion that the Legislature intended to give as broad jurisdiction as it possibly could. Sections 18 and 21 of the Act (Appendix A, *post*) give the Commission power to regulate "any of the rates . . . of any public utility". Section 2 defines a public utility as "every corporation . . . that now or hereafter may own . . . or control any plant or equipment, or any part of any plant or equipment, within this state . . . for the production, transmission, delivery, or furnishing of gas, electricity, water, light, heat or power, either directly or indirectly to or for the public. . . ."

Section 3 provides that the Commission shall be vested with the powers specified in this Act, "and also with all the powers

necessary to enable said commission to carry out fully and effectually all the purposes of this chapter. . . ."

Section 56 reads:

"The provisions of this chapter shall be interpreted and construed liberally in order to accomplish the purposes thereof, and where any specific power or authority is given the commission by the provisions of this chapter the enumeration thereof shall not be held to exclude or impair any power or authority otherwise in this chapter conferred on said commission. The commission shall have, in addition to the powers in this chapter specified, mentioned and indicated all additional, implied and incidental power which may be proper and necessary to effect and carry out, perform and execute all the said powers herein specified, mentioned and indicated. . . ."

See *East Providence Water Co. v. Public Utilities Commission*, 128 Atl. 556, 558 (R. I.).

The power to regulate service such as is furnished to the Attleboro Company in this case by a public utility doing an extensive local business in Rhode Island, is necessary to enable the Commission to carry out the principal purpose of the Act, *i. e.*, to ensure service at reasonable rates to all consumers. If the Commission cannot establish reasonably compensatory rates for service to large customers like the Attleboro Company, it cannot establish reasonable rates for the service rendered to consumers generally. This point has been discussed above in relation to constitutional questions. Whatever may be its bearing on such questions, it certainly tends to show that the Legislature would at least endeavor to give the Commission power to regulate service furnished to every sort of customer so far as such a power could constitutionally be conferred.

As the Narragansett Company never transports its electricity out of Rhode Island, the sale and delivery of the current (although it is interstate commerce because the current is destined for use out of the State) is a transaction within the State

of Rhode Island, over which the Commission was intended to have jurisdiction. The circumstance that the power of the Commission with regard to such transactions is limited in some respects by the commerce clause, does not show that the Legislature did not intend to extend the regulatory power as far as it could do so without infringing that constitutional provision. The Supreme Court of Rhode Island assumed that such was the intention of the statute.

The fact that the current is involved in interstate commerce does not even tend to show that it was intended to be exempt from interference by the Commission. Certainly the generation and transmission of such current within the State was intended to be subject to regulation as to protective devices and other matters concerning the public safety. Nor is there any reason to suppose that the Rhode Island Commission was not intended to have jurisdiction to regulate the local distribution of gas or electricity brought in from another State. Such regulation, although interfering to some extent with interstate commerce, was held to be constitutional in the *Pennsylvania Gas* case, 252 U. S. 23, and was held to be within the jurisdiction of a Public Service Commission by the New York State Court in that case—225 N. Y. 397; P. U. R. 1919 C, 663, and by other state courts in the *Mill Creek Coal Co.* case, 84 W. Va., 662; P. U. R. 1920 A, 704 and *State ex rel. Corporation Commission et al. v. Cannon Mfg. Co. et al.*, 185 N. Car. 17, 116 S. E. 178; P. U. R. 1923 D, 548. No reason appears why all matters touching on interstate commerce should have been intended to be excluded from the jurisdiction of the Rhode Island Commission, any more than they were excluded from the jurisdiction of other state commissions in the cases referred to.

Two special arguments have been presented in behalf of the Attleboro Company to show that the Legislature did not intend to give the Commission jurisdiction over a case like the present.

First: It is said that the Legislature could not have intended

to give the Commission jurisdiction over interstate transportation on railways because it is common knowledge that Congress has taken over the exclusive regulation of such transportation. And then it is further argued that as the language as to jurisdiction over railways is subject to an implied exception as to interstate commerce, therefore the language as to jurisdiction over other public utilities is subject to a similar exception.

As will be shown below the exception as to interstate railways is express, not implied, but the argument will be considered as stated by counsel for the Attleboro Company.

The first inference is by no means clear. Although the Legislature presumably knew that a state commission could not be given power to interfere with the interstate transportation by railroads by regulation of rates, it also knew that the Commission could regulate many matters connected with the interstate transportation by railroads which have been decided not to be a direct burden on such commerce and with regard to which no Federal legislation is applicable. See *Missouri Pac. Ry. v. Larabee Flour Mills Co.*, 211 U. S. 612. Presumably it intended that the Commission should regulate even interstate transportation by railroads as far as it could do so.

The further inference, however, as to interstate commerce of other public utilities is still weaker. Even if the intent were to exclude interstate commerce of railroads entirely from the jurisdiction of the Commission, it does not follow that interstate commerce by other public utility companies was to be entirely excluded from that jurisdiction. The legal situation of other public utilities with regard to interstate commerce is not the same as that of railroads. Congress has regulated the interstate business of the railroads, but it has not legislated about the transmission or sale of electricity, and the Legislature may be presumed to have had in mind the long-established principle of constitutional law that the power of the States to regulate interstate commerce depends in many in-

stances on the fact that Congress has not spoken on the subject.

Moreover, the language of the statute with regard to electric companies is not the same as that with regard to common carriers. By Section 2, the term, common carrier, applies to all railroad companies, etc., "operating any agency for public use in the conveyance of persons or property within this state. . . ." Other public utilities are defined as companies operating "any plant or equipment, or any part of any plant or equipment, within this state" for the transmission, delivery or furnishing of electricity, etc. Conveyance by a common carrier, to be subject to the Act, by its express terms must be entirely within the state. But although an electric company, to be subject to the Act, must have some plant in the State, it is not said that the furnishing of electricity, in order to be subject to the Act, must be within the State. This omission, when dealing with electric companies, of language limiting the application of the Act to companies operating solely within the State, is significant.

It is not to be presumed that the Legislature intended to exclude from the jurisdiction of the Commission cases where the Commission could be given power to act. On the contrary, the presumption is that the Commission was intended to extend its jurisdiction as far as it could constitutionally do, in all cases where the exercise of its jurisdiction was necessary to carry out fully the purposes of the Act. As above pointed out, the Legislature certainly could not have intended to leave the Commission without power to require the use of safety devices in the transmission of electricity for interstate use. Nor is it probable that the Commission was not intended to have power to regulate the distribution and sale to local consumers of current brought in from outside the State, as has been done in New York, West Virginia, North Carolina, and doubtless in other States.

Second: It is said that the Commission was not intended to

have jurisdiction over this foreign company, because the statute gives no right to such a company to file a complaint.

It has been argued above (under III) that the Attleboro Company could file a complaint. But even if the Attleboro Company could not have filed an original complaint, that would not show that the Commission was not intended to have jurisdiction. To draw such a conclusion would be to prove too much. As pointed out above, it would prove that the Commission was not intended to have jurisdiction of controversies between a public utility and any non-resident or any one or more of its resident customers (not being twenty-five electors). In all investigations, however initiated, notice is to be given to all interested parties, and when any party intervenes, it acquires the rights of a complainant. *Public Utilities Commission v. Providence Gas Co.*, 42 R. I. 1; P. U. R. 1919 A, 783.

If the method of procedure provided in the statute does not deny the Attleboro Company the equal protection of the laws or deprive it of its property without due process of law (as to which see argument under III above), there is surely no such extraordinary or unreasonable feature about it as would raise a presumption that the Legislature did not intend to subject the rates charged to the Attleboro Company in the present case to the regulatory power of the Commission.

V.

THE COMMISSION HAD POWER TO FIX FOR SERVICE TO THE ATTLEBORO COMPANY A RATE YIELDING A REASONABLE PROFIT ON THAT SERVICE, AND ANY LESS RATE WOULD BE AN UNLAWFUL DISCRIMINATION.

The Attleboro Company contends that, even if the power of the Commission be admitted, yet the order of the Commission deprives the Company of its property without due process of law, because the facts did not warrant the setting aside of the contract rate and the imposition of the new rate. Without abandoning the right to go into the question whether the evidence supports the findings, the Attleboro Company claims that the Commission followed erroneous principles of law in dealing with those findings.

These findings are as follows:

"The Commission is satisfied that the method used and principles applied in the determination of costs as set forth in Exhibit 10 [filed by the Narragansett Company] are correct; that upon the evidence before the Commission, it appears that the loss to the Narragansett Company resulting from the supply of electric energy to the Attleboro Company under Schedule No. 68 [the contract rate], including a return of eight per cent. upon that part of its investment used in rendering such service, has been for the years 1918 to 1923 inclusive as follows:" (Amounts varying between \$41,000 and \$61,000 a year.) (R. 399.)

"The Commission further finds upon the evidence, that the aggregate loss to the Narragansett Company from serving the Attleboro Company for the term of the contract under the contract rate and Schedule 68, after a return of 8% on the investment devoted to such Attleboro Company service will be not less than \$1,500,000.00.

"The evidence further shows and the Commission finds that the method used and the principles applied in the determination of allocation of plant to the Attleboro service, the receipts from such service, the operating costs thereof,

and the net financial results from the service rendered the Attleboro Company, are correct, . . . and that the result of such operation for the year 1923, shows that the Narragansett Company suffered an operating loss of not less than \$4,326.03, without any return whatever upon the investment devoted to such service. It also appears that the probable operating loss during the year 1924 to the Narragansett Company is not less than \$6,881.95, before any return upon investment.

"The evidence further shows that the estimated annual net losses to the Narragansett Company for service under Schedule No. 68 after an 8% return on capital, for the remaining years of the contract, are as follows:" (Amounts increasing from \$50,000 to \$146,000 a year.) (R. 400, 401.)

"The evidence shows that there is no present reason to anticipate any reduction in such unit costs. (R. 404.)

"After a careful consideration of all the evidence the Commission is of the opinion and therefore finds that the rates contained in schedule . . . No. 68 are unjust, unreasonable, insufficient and unjustly discriminatory and preferential and otherwise in violation of the provisions of the Public Utilities Act in that the said rates, tolls and charges yield no return on the value of the property used by the Narragansett Company in rendering service to the Attleboro Company, while the rates, tolls and charges charged by the Narragansett Company to its other customers yield a fair return on the value of the property used for such service.

"The Commission further finds that a continuance of service to the Attleboro Company under said schedule No. 68 will be detrimental to the general public welfare, and will prevent the Narragansett Company from performing its full duty towards its other customers." (R. 404.)

"The Commission find that under present conditions a return of approximately 8% on the value of the invest-

ment devoted to the furnishing of service to the Attleboro Company is a reasonable return, and that considering all the evidence submitted, service by the Narragansett Company under Schedule . . . No. 125 [containing the new rate] will yield to the Narragansett Company approximately 8% on the investment devoted by the Narragansett Company to the furnishing of such service.

"For all of the reasons hereinbefore stated the Commission finds that the rates contained in Schedule . . . No. 125, are just, reasonable, sufficient and not unjustly discriminatory or preferential or otherwise in violation of any of the provisions of the Public Utilities Act for the reason that such rates, tolls and charges yield a fair return and no more than a fair return on the value of the property used for such service, and that said rates should be substituted for the rates contained in Schedule . . . No. 68." (R. 419.)

The findings that the contract rates are unjust, unreasonable and discriminatory, and that their continuance will be detrimental to the public welfare, and will prevent the Narragansett Company from performing its full duty towards its other customers, and that the new rates are reasonable and not discriminatory, are findings of fact by an administrative board, and are entitled to all the weight due to them as such.

Illinois Central R. R. Co. et als. v. Interstate Commerce Commission, 206 U. S. 441;

Darnell v. Edwards et al., 244 U. S. 564, 569;

Reno Power, Light & Water Co. v. Public Service Commission, 300 Fed. 645, and cases cited at p. 653;

Pacific Coast Elevator Co. v. Department of Public Works, 130 Wash. 620; 228 Pac. 1022.

The Attleboro Company apparently seeks to treat these findings as conclusions of law made upon erroneous theories. The view suggested seems to be that the Commission in determin-

ing what was reasonable, and what was detrimental to the public welfare, did not give proper weight to the fact that the Attleboro Company had a contract for a certain rate. The Commission, it is said, should not have displaced the contract rate, even though they might have found the rate unreasonable if there had been no contract, and if they did displace it, they should not have raised it to the figure which they would have adopted if there had been no contract.

While the Narragansett Company wishes to receive the full benefit of all the findings of fact in its favor, it maintains that all the findings were not only justified but required by the evidence, and that if the Commission had proceeded on the principles suggested, and had given to the Attleboro Company a rate less than it would have paid if it had had no contract, the Commission would have discriminated unlawfully in favor of the Attleboro Company.

The rates for each class of business done by a public utility should be reasonably compensatory for the service rendered, without regard to the return obtained from other classes of business.

This kind of question has generally been raised in cases where Public Service Commissions have fixed rates for a particular class of service, which were alleged to be not compensatory. This Court in recent cases has given relief from such rates, upon the principle above stated, although the Company has been earning dividends on its business as a whole.

Interstate Commerce Commission v. Union Pac. R. R.,
222 U. S. 541, 549;

Northern Pac. Ry. Co. v. North Dakota, 236 U. S.
585, 595-597;

Vandalia R. R. Co. v. Schnull et al., 255 U. S. 113.

See also *Atlantic Coast Line R. R. Co. v. North Carolina Corporation Commission*, 206 U. S. 1, 25-26;

Norfolk & Western Ry. Co. v. Conley, 236 U. S. 605.

In that class of cases the argument for the validity of the

rate established by the Commission was stronger than the present argument advanced against the authority of the Commission to raise the contract rate. The act of the State Commission might conceivably be upheld as long as the Company was not prevented from getting a fair return on its entire business. The State would have power to decide which classes of business should be treated separately, and which not. Such a view seems to have been at one time held by the Supreme Court of the United States. See *Willcox v. Consolidated Gas Co.*, 212 U. S. 19. But the Court in the *Northern Pacific* case, above cited, repudiated any such doctrine, and denied that the *Willcox* case, or any earlier cases, were to be considered as authority therefor.

In the present case, the order of the Commission, finding the contract rate not reasonably compensatory, is attacked. It is a question of the right of the State to provide that a particular class of service should be paid for at rates reasonably compensatory for that service. The presumptions in favor of the reasonableness and constitutionality of the State action are in our favor.

In *Public Utilities Commission v. Wichita R. & L. Co.*, 268 Fed. 37, 41, 42, the Circuit Court of Appeals, in a case somewhat similar to the present, where an old contract rate was superseded, declared the principle above stated, that the rates of each particular class of service must be reasonably compensatory for the service rendered.

Upon appeal to this Court, the decision was reversed (260 U. S. 48) on the grounds that the appellant had not had opportunity to make a contest on the facts, and that there was no proper finding of the facts. There is nothing to show that the decree of the Circuit Court of Appeals would not have been affirmed if there had been a proper finding of the facts. See a discussion of this case in our brief before the Commission. (R. 369-372.)

The case of *Wichita R. R. & L. Co. v. Court of Industrial Relations*, 113 Kan. 217; P. U. R. 1923 D, 593, is not in point. In

that case the Court held that the return from a certain contract was compensatory, notwithstanding that the Commission had held it to be non-compensatory. But the ground of the decision was that the cost had decreased since the finding of the Commission, and appeared at the trial in court to be so low that the contract was amply compensatory. (Page 230.) The case contains some language that does not seem very consistent with the doctrine of this Court in *Interstate Commerce Commission v. Union Pacific R. R.*, *supra*, but it must be borne in mind that the question before the Court was whether the Commission was bound to override the contract, because the contract rate on that particular service was not fully remunerative, and not whether the Commission had the right to override the contract for such a reason if it thought proper to do so.

The case of *Arkansas Natural Gas Co. v. Arkansas R. R. Commission et al.*, 261 U. S. 379, is also not in point because there the statute provided that the Commission should have no jurisdiction to change existing contracts. These two cases are discussed in our brief before the Commission. (R. 377-379.)

The decision of Judge Brown in *Attleboro Co. v. Narragansett Co.*, 295 Fed. 895 (see R. 14), enjoining the carrying out of a former order of the Commission in this controversy, has no bearing on this point. It rests on the ground that there was no formal hearing and no proper finding of facts. On the necessity of a proper hearing and finding of facts, see *Rivelli et als. v. Providence Gas Co.*, 44 R. I. 76; 115 Atl. 461. In the *Attleboro* case just cited the Court's comments on the evidence appearing in the record before it are only *dicta*. And even as *dicta* they have no application to the evidence appearing in the present record, most of which was presented to the Commission for the first time at the hearing after which the present order was made. Judge Brown said (p. 901, R. 14) :

"The finding that the contract was unprofitable and therefore discriminatory rested upon *ex parte* statement, and moreover is a non sequitur.

"That the initial return was low and that profit was expected during later years was stated in the defendant's application to the commission for approval of the contract rates. There was no finding that a present loss would result in rendering the contract as a whole unprofitable. . . .

"Before a contract can be interfered with under the police power, it must appear that the contract does in some manner affect adversely the welfare of the public.

"There is nothing in the records to show that the defendant brought to the notice of the commission any evidence that the company would be unable to perform its full duty to the community whose interest it is the function of the committee to protect." (Page 901.)

"Even if the commission had received an *ex parte* statement that a single contract was for the time being unprofitable, this was far from establishing the fact that the public interest had been injuriously affected." (Page 902.)

On the present record instead of the Commission's having only an *ex parte* statement that the contract is for the time being unprofitable, the uncontradicted evidence presented at a full hearing was that the contract rate fails by a wide margin to give the Narragansett Company any substantial return, both at the present time and for the entire term of the contract, and fails to pay the actual cost of service exclusive of any return on the investment used in furnishing such service, and that the loss, instead of becoming less, will increase in future years. There are now express findings that the old rates were unreasonable, and detrimental to the public welfare.

The rates charged to the Attleboro Company should give to the Narragansett Company a reasonable profit on the portion of investment devoted to that service. The Commission has proceeded upon this theory, which it was certainly at liberty to adopt, if it was not bound to do so. To effect this the contract must be disregarded in determining what is a reasonable rate.

It is true that the contract rate cannot be disturbed unless it is unreasonable, but if it is less than the rate which would be fixed for that service in the absence of the contract, it may be found to be unreasonable. The Commission may properly allow the public utility to earn a reasonable profit on service which is the subject of a contract as much as on service which is not affected by any contract.

Public Utilities Commission v. Wichita R. & L. Co.,
268 Fed. 37;

Market Street Ry. Co. v. Pac. Gas & Electric Co., 6
F. (2d) 633, 637;

Salt Lake City et al. v. Utah Light & Traction Co., 52
Utah 210, 223; P. U. R. 1918 F, 377; and see note,
p. 396;

Re Utah Power & Light Co., P. U. R. 1921 B, 827;
1921 C, 294, 326 (before the Utah Public Utilities
Commission).

Any other method of procedure would produce an unjust discrimination in favor of the consumer having the contract, both as regards any other customer who may at any time take the same service, and as regards the customers in general who are paying rates that yield the Company a reasonable profit.

It is true also that a rate duly established by the State cannot be set aside as too low simply because it yields a less profit than the State might reasonably allow. But it does not follow from this that when the State has allowed a rate as reasonable, which may perhaps be somewhat higher than it might have fixed, it cannot make that rate apply to contract holders. There is a certain range of reasonableness within which the State can act. If it establishes a certain rate that is reasonable apart from the existence of any contract, it can make that rate apply to contract holders.

The findings and the evidence here go further than is necessary to support the order of the Commission superseding the contract rates. Not only does the Narragansett Company fail

to receive a reasonable compensation for its service, but there is an actual continuing loss on this service, without taking into account any return on the investment, a condition which on any theory renders the rate unreasonable.

It is suggested that, as the true reason for holding a rate to be unreasonably low is that it impairs the utility's power to render proper service to its other customers at reasonable rates, therefore it is not justifiable for a court or commission to set aside the contract rate unless it appears that the advantage gained by the particular contract customer in having a low rate prevents the Company from giving proper service to its other customers and paying reasonable dividends to its stockholders. But this argument is only specious. Every advantage gained by a contract customer, over the rate he would have to pay if he had no contract, is a discrimination in his favor against other customers. It tends to impair the ability of the Company to serve its other customers. How much it actually impairs that ability is immaterial. Any other doctrine would make the right of the customer to retain the benefit of his contract depend on how large a consumer he was. A very small customer of a big company could hang on to his contract forever, no matter how outrageous a preference it gave him.

There may be many customers having contracts, no one of which would cause a large loss to the Company, and yet taken together they might amount to a serious burden. Suppose a public utility company has numerous contracts with particular customers, varying in their terms, and relating to several different classes of service, or to different localities in which the cost of service varies. The Company may have a good case for raising its rates as to one such class of service; but as to the other classes of service it may be in doubt, not having yet compiled sufficient *data* to prove its case for a raise. The contracts relating to the first class of service may involve, individually and in the aggregate, only small amounts; the aggregate of the contracts in all classes of service may involve very large

amounts. Cannot the Commission approve the increased rates in the first class of service, and make them applicable to the contract holders, without making the investigation cover rates in all classes of service, and bringing in all contract customers, so as to determine whether the aggregate of all the contracts amounts to a serious burden on the Company?

In no case will there be found any reference to the amount of burden which a contract casts on the utility company, or to the relative importance of a particular customer, or of all the contract customers taken together, as compared with the whole of the public served.

Supposing that a contract is properly set aside as imposing too low a rate, none of the cases indicate that the Commission or the Court in fixing a higher rate proceeds on any different principles than if there had never been any contract. On the contrary, in cases where contract customers claim exemption from a rate fixed by the Commission, the practice of the courts, as well as utility Commissions, is to treat the fact that the rate fixed by the Commission is higher than the contract rate as showing that the latter is unreasonable and discriminatory, and to make the contract customers (whenever the commission has power to affect their contracts at all) subject to the same rate as other customers.

United States Smelting, Refining & M. Co. v. Utah Power & Light Co. et al., 58 Utah 168; 258 U. S. 609;

Market St. Ry. Co. v. Pacific Gas & Electric Co. et al., 6 F. (2d) 633, 636;

In re Searsport Water Company, 118 Maine 382;

Leiper v. The Baltimore & Philadelphia R. R. Co. et al., 262 Pa. 328, P. U. R. 1919 C, 397;

State ex rel. Washington University v. Public Service Commission, 272 S. W. 971, 972; P. U. R. 1926 A, 764, 767 (Missouri Supreme Court);

Re Utah Power & Light Company, P. U. R. 1921 B,

827; 1921 C, 294, 326 (Utah Public Utilities Commission) ;

Re Orleans Electric Light & Power Co., P. U. R. 1919 D, 979, (Indiana Public Service Commission).

Although the machinery provided by the Interstate Commerce Act for establishing rates in interstate commerce differs from that provided by the Rhode Island Public Utilities Act for establishing rates for service subject to its jurisdiction, the establishing of a rate for a particular class of service by the Rhode Island Commission has in substance the same effect on an existing contract that the establishment of a rate in interstate commerce has upon contracts with regard to such commerce. The rate applies to the contract holders just as if they had not contracts. *Armour Packing Co. v. United States*, 209 U. S. 56, 80-83. Compare sections 39 and 40 of the Rhode Island Act, forbidding discrimination.

VI.

THE ORDER OF THE COMMISSION IS SUPPORTED BY THE EVIDENCE.

The evidence is fully reported in the record. The opinion of the Commission analyzes it carefully, and shows the manner in which the Commission's conclusions are reached. The arguments before the Commission of counsel on both sides (incorporated in the Record, pp. 188-222) discuss the facts at length.

It is undoubtedly the right of this Court to give its independent consideration to the facts as well as the law in the case, so far as is necessary to decide the constitutional points involved.

On the other hand, it is the province of the Public Utilities Commission of the State, as an administrative board, to determine such questions.

"The question of the reasonableness of what it [the Narragansett Company] has attempted to do, and whether the public interest is such as to override the obligation of its contract, involves an administrative question which cannot be determined by the defendant or by this Court.

"The statutory commission was created by the Legislature to determine such questions. . . ." *Attleboro Steam & Electric Co. v. Narragansett Electric Lighting Co.*, 295 Fed. 895, 904. (R. 20.)

There is a presumption that such findings are true, unless there is no evidence on which they could properly have been founded.

Interstate Commerce Comm. v. Union Pac. R. R., 222 U. S. 541, 547;

Atchison T. & S. F. Ry. Co. v. United States, 232 U. S. 199, 221;

Darnell v. Edwards et al., 244 U. S. 564, 569;

Salt Lake City et al. v. Utah L. & T. Co., 52 Utah 210; P. U. R. 1918 F, 377, 392-393.

In cases where the issue is whether rates are so low as to be

confiscatory of the public utility's property, the Federal courts go into the evidence fully. But this is not such a case.

Smyth v. Ames, 169 U. S. 466, 522-550;

Willcox et al. v. Consolidated Gas Co., 212 U. S. 19;

Des Moines Gas Co. v. Des Moines, 238 U. S. 153;

Pacific Gas & Electric Co. v. San Francisco, 265 U. S. 403;

See *Van Dyke et al. v. Geary et al.*, 244 U. S. 39, 48-49;
Ohio Valley Water Co. v. Ben Avon Borough et al.,
 253 U. S. 287.

It is further submitted that in the present case, even without such presumption, the evidence not only supports but requires such findings.

Respectfully submitted,

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APPENDIX A.

EXTRACTS FROM GENERAL LAWS OF RHODE ISLAND, 1923, CHAPTER 253 (PUB. LAWS 1912, CH. 795).

Of the Public Utilities Commission and of the Regulation and Control of Public Utilities.

(3664)

Section 1. This chapter shall be known as the Public Utilities Act, and shall apply to the public utilities herein described and to the commission hereby created, and to the public utility corporations and persons herein mentioned and referred to.

(3665)

Sec. 2. The term "commission," when used in this chapter, means the public utility commission hereby created.

The term "commissioner," when used in this chapter, means one of the members of such commission.

The term "corporation," when used in this chapter, includes a corporation, company, association and joint stock company or association.

The term "person," when used in this chapter, includes an individual, corporation, and a firm or co-partnership.

The term "public utility," when used in this chapter, shall mean and embrace, and apply to every corporation, company, person, association of persons, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, lease, operate, manage or control any railroad, or street railway within this state, or that now or hereafter may operate or do business as a common carrier within this state; and to every corporation, company, person, association of persons, their lessees, trustees or receivers, appointed by any court whatsoever, that now or hereafter may own, lease, operate, manage or control any plant or equipment, or any part of any plant or equipment, within this state for the conveyance of telegraph or telephone messages, or for the production, transmission, delivery, or furnishing of gas, electricity, water, light,

heat or power, either directly or indirectly to or for the public: *Provided*, that this chapter shall not be construed to apply to any public water works and water service owned and furnished by any city or town.

The term "common carrier," when used in this chapter shall mean and apply to and embrace all railroad corporations, street railway corporations, express companies, freight companies, freight line companies, dining-car companies, steamboat, power-boat and ferry companies, and all persons and associations of persons whether incorporated or not, and their lessees, trustees and receivers, appointed by any court whatsoever, operating any agency for public use in the conveyance of persons or property within this state by land or by water, or both.

The term "railroad," when used in this chapter includes every railroad other than a street railway, by whatsoever power operated for public use in the conveyance of persons or property for compensation, with all bridges, ferries, tunnels, switches, spurs, tracks, stations, wharves and terminal facilities of every kind, used, operated, controlled, leased or owned by or in connection with any such railroad.

The term "street railway," when used in this chapter includes every railway by whatsoever power operated or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for compensation, being mainly upon, along, above or below any street, avenue, road, highway, bridge or public place in any city or town, and including all switches, spurs, tracks, rights of trackage, subways, tunnels, stations, terminals, and terminal facilities of every kind, used, operated, controlled or owned, by or in connection with, any such street railway.

The terms "plant or equipment," when used in this chapter, shall mean and apply to and embrace all the real estate, easements, buildings, machinery, apparatus, devices, rolling stock, and tangible property of whatsoever kind and nature, and

wherever located, used, controlled, operated, leased or owned by a public utility in the conduct of the business thereof.

The term "service" is used in this chapter in its broadest and most inclusive sense.

(3666)

Sec. 3. There shall be a public utilities commission for the state, which commission shall be vested with and possessed of the powers and duties specified in this chapter, and also with all the powers necessary to enable said commission to carry out fully and effectually all the purposes of this chapter. . . .

(3680)

Sec. 17. All hearings, investigations and inquiries before the commission shall be governed by rules to be adopted and prescribed by the commission, and in such hearings and investigations and inquiries, the commission shall not be bound by the technical rules of evidence.

(3681)

Sec. 18. Upon a written complaint made against any public utility by any city or town council, or by any corporation, or by any twenty-five qualified electors that any of the rates, tolls, charges or any joint rate or rates of any public utility are in any respect unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act whatsoever of any public utility, affecting or relating to the conveyance of persons or property or any service in connection therewith, or affecting or relating to the production, transmission, delivery or furnishing of heat, light, water, or power, or any service in connection therewith, or the conveyance of any telephone or telegraph message, or any service in connection therewith, is in any respect unreasonable, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained or is unsafe, or the public safety is endangered thereby, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, regulations, measure-

ments, practice, act or service complained of shall be entered by the commission without a formal public hearing. When any complaint shall be made by twenty-five or more qualified electors, such complaint shall designate one of the complainants upon whom shall be served all notices, orders and citations required by this chapter to be served upon complainants.

(3682)

Sec. 19. The commission shall, prior to such formal hearing notify the public utility complained of that a complaint has been made, and ten days after such notice has been given, the commission may proceed to set a time and place for a hearing and an investigation as hereinafter provided.

(3683)

Sec. 20. The commission shall give the public utility and the complainant, if any, ten days' notice of the time and place where and when such hearing and investigation will be held and such matters considered and determined. Both the public utility and the complainant shall be entitled to be heard and appear by counsel, and shall have process to enforce the attendance of witnesses.

(3684)

Sec. 21. If upon such a hearing and investigation had under the provisions of this chapter, the commission shall find any existing rates, tolls, charges, or joint rate or rates of any public utility, to be unjust, unreasonable, insufficient or unjustly discriminatory or to be preferential or otherwise in violation of any of the provisions of this chapter, the commission shall have power to fix and order substituted therefor such rates, tolls, charges or joint rates as shall be just and reasonable.

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(3687)

Sec. 24. If upon such a hearing and investigation it shall be found that any rate, toll, charge, or joint rate or rates is unjust, unreasonable, insufficient or unjustly discriminatory or preferential or otherwise in violation of any of the provisions of this chapter, or that any regulation, measurement, practice,

act or service complained of is unjust, unreasonable, insufficient, preferential or otherwise in violation of any of the provisions of this chapter, or if it be found that any service is inadequate or that any reasonable service cannot be obtained, the public utility found to be at fault shall pay the expenses incurred by the commission upon such investigation either in whole or in part as the commission in its discretion may determine.

(3688)

Sec. 25. The commission may, in its discretion, when complaint is made of more than one rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at such time as it may prescribe. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

(3689)

Sec. 26. Whenever the commission shall believe that any of the rates, tolls, charges, or any joint rate or rates, charged, demanded, exacted or collected by any public utility are in any respect unreasonable, or unjustly discriminatory, or otherwise in violation of this chapter, or that any regulation, measurement, practice or act whatsoever of such public utility, affecting or relating to the conveyance of persons or property, or any service in connection therewith, or affecting or relating to the production, transmission, delivery or furnishing of heat, light, water or power, or any service in connection therewith, or the conveyance of telephone or telegraph messages, or any service in connection therewith, is in any respect unreasonable, insufficient, or unjustly discriminatory; or that any service of such public utility is inadequate or cannot be obtained, or is unsafe, or the public safety is endangered thereby, or that an investigation of any matter relating to a public utility should, for any reason be made, it may on its own motion, summarily investigate the same with or without notice.

(3690)

Sec. 27. If, after making such summary investigation, the

commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters so investigated, it shall furnish such public utility interested, a statement notifying the public utility of the matters under investigation. Ten days after such notice have been given the commission may proceed to set a time and place for a hearing and investigation.

(3691)

Sec. 28. Notice of the time and place for such hearing and investigation shall be given to the public utility and to such other interested persons as the commission shall deem necessary, as provided in section twenty hereof, and thereafter the proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the commission relative to the matter investigated, and the same order or orders may be made in reference thereto as if such hearing and investigation had been made on complaint.

(3692)

Sec. 29. The commission shall cause a certified copy of all its orders to be served upon an officer or agent of the public utility affected thereby, and upon the complainant if any there be, and all such orders shall of their own force take effect and become operative ten days after service thereof unless a different time be fixed by the order.

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(3696)

Sec. 33. The commission may at any time upon notice to the public utility and after opportunity to be heard as provided in section twenty, rescind, alter, or amend any order fixing any rate, toll, charge, joint rate or rates, or any other order made by the commission, and certified copies of the same shall be served and take effect as herein provided for original orders.

(3697)

Sec. 34. Any public utility or any complainant, aggrieved by any order of the commission fixing any rate, toll, charge, joint

rate or rates, or any order fixing any regulation, measurement, practice, act or service, may appeal to the supreme court for a reversal of such order on the ground that the rate, toll, charge, joint rate or rates, fixed in the order are unlawful or unreasonable, or that any such regulation, measurement, practice, act or service fixed in such order is unlawful or unreasonable.

The party prosecuting the appeal shall file a petition with the clerk of the supreme court within seven days from the service of the order appealed from, and such petition shall set forth the grounds upon which it is claimed that the order appealed from is unlawful or unreasonable. Thereupon the clerk of the supreme court shall issue citation to all parties in interest, including the commission, returnable at any time within thirty days from date of its issue in the discretion of the court, and the court shall hear and determine, as soon as may be, the matter, and either sustain or reverse the order appealed from. The court is hereby given authority to regulate the practice and procedure in such appeal by such rules as it may see fit to make: *Provided*, that all such appeals shall have precedence over other civil cases in the supreme court.

(3699)

Sec. 36. At any hearing in the course of such an appeal a transcript of the testimony before the commission in such case, duly certified by the stenographer taking the same, and allowed by one of the commissioners, shall be admitted as testimony.

(3700)

Sec. 37. If, upon the hearing of the appeal, newly discovered evidence shall be introduced by the appellant which is found by the court to be of such a character and of sufficient importance, to warrant a reconsideration of the order appealed from, the court, before proceeding to render a final decision, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission and shall stay further proceeding in said action for sixty days from the date of such transmission. Upon the receipt of such evidence the commission shall consider the same and may alter, amend

or rescind the order appealed from, and shall report its action thereon to the court within fifty days from the receipt of such evidence. If the commission shall rescind the order appealed from, the appeal shall be dismissed. If it shall alter, or amend the same, such altered or amended order shall take the place of the original order appealed from and the court shall render its decree thereon as though made by the commission in the first instance. If the original order shall not be altered, amended or rescinded by the commission, the final decision shall be rendered upon such original order and the final decree entered in conformity therewith.

(3701)

Sec. 38. Every public utility is required to furnish safe, reasonable and adequate services and facilities. The rate, toll or charge, or any joint rate, made, exacted, demanded or collected by any public utility for the conveyance or transportation of any persons or property between points within the state, or for any heat, light, water or power produced, transmitted, delivered or furnished, or for any telephone or telegraph message conveyed, or for any service rendered or to be rendered in connection therewith, shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited and declared unlawful.

(3702)

Sec. 39. If any public utility or any agent or officer of a public utility, as defined in this chapter, shall directly or indirectly by any device whatsoever, or otherwise charge, demand, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it in, or affecting, or relating to, the transportation of persons or property between points within this state, or the production, transmission, delivery or furnishing of heat, light, water or power, or the conveyance of telegraph or telephone messages, or for any service in connection therewith, than that prescribed in the published schedules or tariffs then in force or established as provided herein or than it charges demands,

collects, or receives from any other person, firm or corporation for a like and contemporaneous service, under substantially similar circumstances and conditions, such public utility shall be deemed guilty of unjust discrimination which is hereby prohibited and declared to be unlawful, and upon conviction thereof shall be fined not less than two hundred dollars nor more than five hundred dollars for each offense; and such agent or officer so offending shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than fifty dollars nor more than five hundred dollars for each offense.

(3703)

Sec. 40. If any public utility shall make or give any undue or unreasonable preference or advantage to any particular person, firm, or corporation, or shall subject any particular person, firm, or corporation to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, such public utility shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than two hundred dollars nor more than five hundred dollars for each offense.

(3704)

Sec. 41. It shall be unlawful for any person, firm, or corporation knowingly to solicit, accept or receive any rebate, concession or discrimination in respect to any service in, or affecting, or relating to, the transportation of persons or property, or affecting or relating to the production, transmission, delivery or furnishing of heat, light, water or power, or the conveyance of telephone or telegraph messages within this state, or for any service in connection therewith, whereby such service shall by any device whatsoever or otherwise be rendered free, or at a less rate than that named in the published schedules and tariffs in force as provided herein, or whereby any service or advantage is received other than is herein specified. Any person, firm, or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a

fine of not less than fifty dollars nor more than five hundred dollars for each offense.

(3705)

Sec. 42. The provisions of sections thirty-nine, forty and forty-one of this chapter shall be subject to the following exceptions:

(a) A public utility may issue or give free transportation or service to its employees and their families, its officers, agents, surgeons, physicians and attorneys-at-law, and to the officers, agents and employees, and their families of any other public utility.

(b) With the approval of the commission any public utility may give free transportation or service, upon such conditions as such public utility may impose, or grant special rates therefor to the state, to any town or city, or to any water or fire district, and to the officers thereof, for public purposes, and also to any special class or classes of persons, not otherwise referred to in this section, in cases where the same shall seem to the commission just and reasonable, or required in the interests of the public, and not unjustly discriminatory.

(c) With the approval of the commission any public utility operating a railroad or street railway may furnish to the publishers of newspapers and magazines, and to their employees, passenger transportation in return for advertising in such newspapers or magazines at full rates.

(d) With the approval of the commission any public utility may exchange its service for the service of any other public utility furnishing a different class of service.

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(3707)

Sec. 44. The commission shall have power, when deemed by it necessary to prevent injury to the business or interest of the people or any public utility of this state in case of any emergency to be judged of by the commission, to permit any public utility to temporarily alter, amend or suspend any ex-

isting rates, schedules and order relating to or affecting any public utility or part of any public utility in this state.

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(3711)

Sec. 48. [As amended by Chapter 1651, Public Laws, 1918]. Every public utility shall file with the commission within a time to be fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection therewith or performed by any public utility controlled or operated by it. A copy of so much of said schedules as the commission shall deem necessary for the use of the public shall be printed in plain type, or typewritten, and kept on file in every station or office of such public utility where payments are made by the consumers or users, open to the public in such form and place as to be readily accessible and conveniently inspected, and as the commission may order. The commission may determine and prescribe the form in which the schedules, required by this section to be kept open to public inspection, shall be prepared and arranged, provided, that with respect to public utilities subject to the federal "Act to regulate commerce," so-called, the form of such schedules shall be that from time to time prescribed by the interstate commerce commission. No change shall be made in the rates, tolls, and charges which have been filed and published by any public utility in compliance with the requirements of this section, except after thirty days' notice to the commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rates, tolls or charges will go into effect. Whenever the commission receives such notice of any change or changes proposed to be made in any schedule filed under the provisions of this section, it shall have power either upon complaint as specified in section eighteen hereof, or upon its own motion and upon such notice as provided for in section

twenty hereof to hold a public hearing and make investigation as to the propriety of such proposed change or changes. After notice of any such investigation, the commission shall have power by any order served upon the public utility affected to suspend the taking effect of such change or changes pending the decision thereon, but not for a longer period than three months beyond the time when such change or changes would otherwise take effect. After such hearing and investigation either upon complaint as specified in section eighteen hereof or upon its own motion, the commission may make such order in reference to any proposed rate, toll or charge as may be proper. At any such hearing involving any proposed increase in any rate, toll or charge, the burden of proof to show that such increase is necessary in order to obtain a reasonable compensation for the service rendered shall be upon the public utility: *Provided*, that the commission may, in its discretion and for good cause shown, allow changes within less time than required by the notice herein specified, and without holding the hearing and investigation herein provided for or modify the requirements of this section with respect to filing and publishing tariffs either in the particular instance or by general order applicable to special or particular circumstances or conditions.

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(3719)

Sec. 56. The provisions of this chapter shall be interpreted and construed liberally in order to accomplish the purposes thereof, and where any specific power or authority is given the commission by the provisions of this chapter the enumeration thereof shall not be held to exclude or impair any power or authority otherwise in this chapter conferred on said commission. The commission shall have, in addition to the powers in this chapter specified, mentioned and indicated all additional, implied and incidental power which may be proper and necessary to effect and carry out, perform and execute all the said powers herein specified, mentioned and indicated. A substantial compliance with the requirements of this chapter

shall be sufficient to give effect to all the rules, orders, acts and regulations of the commission, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto. Each section of this chapter, and every part of each section, are hereby declared to be independent sections, and the holding of any section or sections or part or parts thereof to be void, ineffective, or unconstitutional for any cause shall not be deemed to affect any other section or part thereof.

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APPENDIX B.

(a)

LAWS OF RHODE ISLAND, 1884, pp. 29-30.

AN ACT TO INCORPORATE THE NARRAGANSETT ELECTRIC LIGHTING COMPANY.

Passed May 29, 1884.

It is enacted by the General Assembly as follows:

SECTION 1. Isaac M. Potter, James G. Markland, Samuel W. Peckham, Henry C. Bradford, Frederick I. Marcy, Martin V. Brady, Nathaniel T. Spink and John B. Allen, their associates, successors and assigns, are hereby constituted a corporation by the name of "The Narragansett Electric Lighting Company," for the purpose of prosecuting a general electric lighting, heating and power business; that is to say, the business of producing, using and supplying light, heat and power generated by means of electricity; and for the transacting of other business connected therewith; with all the powers and privileges, and subject to all the duties and liabilities set forth in chapters 152 and 155 of the Public Statutes, and in the statutes in amendment thereof, and in addition thereto.

SEC. 2. The capital stock of said corporation shall not exceed one hundred and fifty thousand dollars, to be fixed in amount from time to time, and to be divided into such number of shares, and the par value of each share to be fixed at such amount as the corporation may by vote determine; and said shares shall be non-assessable.

SEC. 3. The stock or shares of every stockholder shall be pledged and liable to the corporation for all debts and demands due and owing from such stockholder to the corporation, and whether overdue or due at a future day; and said stock or shares may be sold for the payment of such debts and demands in such manner as the by-laws of said corporation may prescribe; and in case the proceeds of such sale shall be insuffi-

cient to discharge such debts or demands, with the incidental expenses of sale, the corporation may have their action against the debtor for the balance due.

SEC. 4. Said corporation, with the consent of the town and city councils where wires and conductors for electricity are to be put up, laid, used and maintained, may put up, lay, use and maintain wires and conductors for electricity, under and over highways, streets and sidewalks, and, with the written consent of the owners thereof, upon and over buildings, subject to such ordinances, regulations and orders of the city and town councils of the cities or towns where such wires or conductors shall be maintained, as are or may be enacted with respect to such wires and conductors; and said wires and conductors located above any highway shall be removed whenever required by general law or by order of such city or town council, after thirty days' notice in writing shall be given to said corporation; and said corporation shall be entitled to no compensation on account of such removal.

SEC. 5. There shall be an annual meeting of the stockholders, in the city of Providence, at such time as the by-laws shall prescribe, for the choice of officers, and for such other business as may come before them.

SEC. 6. Said corporation shall have an office or place of business in the city of Providence.

SEC. 7. This act shall take effect from and after its passage.

APPENDIX B.

(b)

LAWS OF RHODE ISLAND, 1917, pp. 341-348.

AN ACT IN AMENDMENT OF AN ACT, ENTITLED "AN ACT TO INCORPORATE THE NARRAGANSETT ELECTRIC LIGHTING COMPANY", PASSED AT THE MAY SESSION OF THE GENERAL ASSEMBLY, A. D. 1884, AND THE SEVERAL ACTS IN AMENDMENT THEREOF AND RELATING THERETO.

Approved April 19, 1917.

It is enacted by the General Assembly as follows:

Section 1. The Narragansett Electric Lighting Company, a corporation created by an act of the general assembly, passed at its May session, A. D. 1884, and engaged in a general electric lighting, heating and power business, and for that purpose owning, leasing or controlling lines of a voltage of 11,000 volts or more for the transmission of electricity, is hereby authorized and empowered to complete or extend any such lines of a voltage of eleven thousand volts or more as it may from time to time own, lease or control, or any lines of such voltage operated or designed to be operated in connection therewith by acquiring and taking from time to time such additional lands and interests, estates and rights in lands (but not including the right to acquire or take under the provisions of this act any water power) as it may from time to time require for any such lines of the aforesaid voltage or for completing or extending any of the same and in the manner hereinafter provided: *Provided, however*, that all rights under this act in the city of Providence are hereby confined to the location of such lines extending from the power station of the Narragansett Electric Lighting Company on the westerly side of the Providence river generally southerly and then across said river to a point (detailed description follows) . . . but nothing herein contained shall be construed as granting said corpora-

tion any right to locate any of the same in, over or across any street or highway in said city; *and provided, further*, with respect to the taking of any portion of the land, location or right of way of any railroad, street railway or other public service company in said city, that said rights shall be subject to the provisions of Section 3 of this act; *and provided, further*, that said rights in the city of Providence shall be exercised within two years from and after the passage of this act and not thereafter; *and provided, further*, that said corporation shall not take under the provisions of this act any lands or any interests, estates or rights in any lands that shall have been acquired or may hereafter be acquired by any city or town for municipal or public purposes, except in such reasonable locations as may be approved by the city council of such city or the town council of such town: *Provided, further*, that said corporation shall not take under the provisions of this act any portion of any public street or highway of any town or city in this state or any other lands or interests, estates or rights in lands that shall have been acquired by any town or city in this state for municipal or public purposes, except in such reasonable locations as may be approved by the town council or city council of such town or city, respectively; and that said corporation shall not take under the provisions of this act, any lands, interests, estates or rights in lands in any town or city in said state except in such reasonable locations as may be approved by the town council or city council of such town or city, respectively; *and provided, further*, that said corporation shall not take under the provisions of this act any lands or any interests, estates or rights in any lands in the town of East Providence lying southerly on a line running from a point on the shore of the Providence river (detailed description follows) . . . *and provided, further*, that said corporation shall not take under the provisions of this act any lands or any interests, estates or rights in any lands after the expiration of ten years from and after the date of the passage of this act.

Sec. 2. Whenever said corporation desires to take any lands

interests, estates or rights therein it may proceed to acquire the right to use such land and to acquire such estate or easement in such land as it may deem necessary for its said corporate purposes in the following manner; said corporation shall present a petition to the superior court of the State of Rhode Island, in the county where such right, easement or estate is required, setting forth the right, easement or estate required, the name or names of the owner or owners (then follow details of procedure for hearing on the petition). . . . (Page 345:)

At the time fixed for said hearing the said court if it shall find the use and taking of the right, easement or estate mentioned in said petition to be necessary for its said corporate purposes shall thereupon appoint three disinterested persons resident of the county, commissioners to assess and appraise the damages (then follow details for assessment and appraisal of damages). . . .

(Page 347:)

Sec. 3. Nothing in this act shall authorize the Narragansett Electric Lighting Company to condemn any portion of the land, location or right of way of any railroad, street railway or other public service company, except for the purpose of crossing the same either above or below grade and of maintaining suitable and convenient supports for such crossing, in such manner as not to render unsafe, or to impair the usefulness of such land, location or right of way for railroad or street railway purposes or the purposes of such public service company. If said corporation and any such railroad, street railway or public service company are unable to agree as to the method and manner of the construction and maintenance of any such crossing, either may apply to the public utilities commission for a determination thereof, and, after hearing, such crossing shall be constructed and maintained in such method and manner as may be ordered by said commission. Either party aggrieved by such order of said commission may appeal

to the supreme court in the manner provided by Section 34 of the public utilities act. Said corporation shall be liable to any such railroad, street railway or public service company for such damages and reasonable expense as may result to it by reason of any line of said corporation crossing such railroad, street railway or public service company's land, location or right of way.

Sec. 4. Said corporation may convey any such transmission line or any part thereof or right or interest therein, and the rights acquired for the same, to any other corporation, company or association having the right to carry on the electric light, heat or power business in the town or city where such line or part thereof is located, or may enter into an agreement giving to any such corporation, company or association the right to use any such line or part thereof, or agreeing to transmit electricity for any such corporation, company, or association over such line or part thereof.

Sec. 5. The act incorporating said Narragansett Electric Lighting Company and the various amendments thereto are hereby amended in accordance with the provisions of this act.

Sec. 6. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect from and after its passage.

APPENDIX B.

(c)

LAWS OF RHODE ISLAND, 1918, pp. 253-255.

AN ACT IN AMENDMENT OF AN ACT, ENTITLED "AN ACT IN AMENDMENT OF AN ACT ENTITLED 'AN ACT TO INCORPORATE THE NARRAGANSETT ELECTRIC LIGHTING COMPANY,' PASSED MAY 29, 1884, AND THE SEVERAL ACTS IN AMENDMENT THEREOF *and* RELATING THERETO," PASSED AT THE JANUARY SESSION, A. D. 1899.

Approved April 29, 1918.

It is enacted by the General Assembly as follows:

SECTION 1. Sections 1, 2, 3 and 4 of the Act entitled "An Act in amendment of an Act entitled, 'An Act to incorporate the Narragansett Electric Lighting Company,' passed May 29, 1884, and the several Acts in amendment thereof and relating thereto," passed at the January session, A. D. 1899, are hereby amended so as to read as follows:

"SECTION 1. In addition to the powers heretofore granted to the Narragansett Electric Lighting Company, said corporation is hereby authorized and empowered from time to time to acquire by lease, purchase or otherwise, on such terms and conditions as may be agreed upon, and to possess, use, exercise, and dispose of the ownership or control of any right, property or franchise held by any person, corporation or association engaged in or authorized to engage in a business similar to that of said corporation or to produce or furnish light, heat or power. And said Narragansett Electric Lighting Company may issue its capital stock or bonds at not less than par, in payment therefor; and any corporation or association which shall own or hold such rights or franchises may sell or lease the ownership or control of the same to said Narragansett Electric Lighting Company and receive such stock or bonds in payment therefor; and the capital stock

of said Narragansett Electric Lighting Company when issued as aforesaid shall be deemed to be fully paid and non-assessable."

"SEC. 2. Said corporation is hereby authorized and empowered to acquire, to hold, and to dispose of the stock, shares, bonds, securities and obligations issued by any other corporation or association engaged in or authorized to engage in a business similar to its own or to produce or furnish light, heat or power, and may issue its capital stock and bonds at not less than par in payment for the same, and any stock so issued shall be deemed full-paid and non-assessable."

"SEC. 3. Said corporation is hereby authorized and empowered from time to time to guarantee the stocks, shares and bonds, and the dividends and interest thereon, of any corporation or association established for purposes similar to its own or for the purpose of producing or furnishing light, heat or power."

"SEC. 4. Said corporation is hereby authorized and empowered to increase its capital stock from time to time and in such amounts as may be required in the exercise of the powers granted by this act and the several acts of which it is an amendment, to an amount not exceeding the amount of its capital stock as now or hereafter authorized. Said corporation may also guarantee the payment of bonds and obligations and dividends of profits on stocks of other similar corporations and associations, and corporations or associations authorized to engage in the business of producing or furnishing light, heat or power, controlled by it, and as security for the same and for the payment of bonds, notes, and other obligations originally issued by itself in the prosecution of its business may mortgage all or any part of its property and franchises."

SECTION 2. This Act shall take effect on and after its passage.

APPENDIX C.

CONNECTICUT, GENERAL STATUTES (1918).

SEC. 3635. *Rates and service affecting many persons.* Any town, city or borough within which, or between which and any other town, city or borough in this state, any public service company is furnishing service, or any ten patrons of any such company, or any such company furnishing service in accordance with, or at rates prescribed by, an order of the commission, may bring a written petition to the commission alleging that the rates or charges made by such company or prescribed by the commission are unreasonable, or that the service furnished by such company is inadequate to, or the service ordered by the commission exceeds, public necessity and convenience. Thereupon the commission shall fix a time and place for a hearing upon such petition, and shall mail notice thereof to the parties in interest and give due public notice thereof at least one week prior to such hearing. Upon said hearing the commission may, if it finds such rates and charges to be unreasonable, or such service to be inadequate or excessive, determine and prescribe an adequate service to be thereafter furnished or just and reasonable maximum rates and charges to be thereafter made by such company, and such company shall thereafter furnish the service so prescribed, and shall not thereafter demand any rate or charge in excess of the maximum rate or charge so prescribed.

MAINE, REVISED STATUTES (1916).

Chapter 55, Section 43. *Complaints against public utilities.* C. 129, §41. Upon written complaint made against any public utility by ten persons, firms, corporations or associations aggrieved, that any of the rates, tolls, charges or schedules or any joint rate or rates of any public utility are in any respect unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act of said public utility is in any respect unreasonable, insufficient or unjustly discrimin-

atory, or that any service is inadequate or cannot be obtained, the commission, being satisfied that the petitioners are responsible and that a hearing is expedient, shall proceed with or without notice, to make an investigation thereof. But no order affecting said rates, tolls, charges, schedules, regulations, measurements, practices or acts complained of shall be entered by the commission without a formal public hearing.

MASSACHUSETTS, GENERAL LAWS (1921).

Chapter 159. *Common Carriers.*

SECTION 14. Whenever the department shall be of opinion, after a hearing had upon its own motion or upon complaint, that any of the rates, fares or charges of any common carrier for any services to be performed within the commonwealth, or the regulations or practices of such common carrier affecting such rates, are unjust, unreasonable, unjustly discriminatory, unduly preferential, in any wise in violation of any provision of law, or insufficient to yield reasonable compensation for the service rendered, the department shall determine the just and reasonable rates, fares and charges to be charged for the service to be performed, and shall fix the same by order to be served upon every common carrier by whom such rates, fares and charges or any of them are thereafter to be observed. Every such common carrier shall obey every requirement of every such order served upon it, and do everything necessary or proper in order to secure absolute compliance with every such order by all its officers, agents and employees. If, upon investigation, the department finds that in any case it is consistent with the public interests to authorize a common carrier to make its charge for transportation less for a longer than for a shorter distance, the department may grant such authority and may from time to time modify or revoke the same.

If complaint is made to the department concerning any rate, fare or charge demanded and collected by any railroad corporation for any service performed and the department finds

after hearing and investigation that an unjustly discriminatory rate, fare or charge has been collected for any service, the department may order the railroad corporation which has collected the same to make due reparation to the person who has paid the same, with interest from the date of the payment of such unjustly discriminatory amount; but such order of reparation shall cover only payments made within two years before the date of filing the petition seeking to have reparation ordered. Such order may be made without formal hearing whenever the railroad corporation affected shall assent in writing thereto, or file or join in a petition therefor, but in no case shall any such order be made until the department shall be satisfied by such investigation as may be necessary that the rate, fare or charge collected was in fact unjustly discriminatory.

SECTION 24. Upon written complaint, relative to the service or charges for service in, to or from any city or town as rendered or made by any company engaged therein in the transmission of intelligence by electricity, by the mayor or selectmen, or by twenty customers of the company, the department shall grant a public hearing, first giving to the complainants and the company reasonable written notice of the time and place thereof. On written complaint of the mayor, selectmen or twenty legal voters of a city or town within which any railroad or railway is located, alleging grounds of complaint, the department shall examine the condition and operation of such railroad or railway, first giving to the complainants and the corporation or company reasonable written notice of the time and place thereof.

Chapter 164. *Manufacture and Sale of Gas and Electricity.*

SECTION 93. On written complaint of the mayor of a city or the selectmen of a town where a gas or electric company is operated, or of twenty customers thereof, either as to the quality or price of the gas or electricity sold and delivered, the department shall notify said company by leaving at its office a copy of such complaint, and shall thereupon, after notice, give

a public hearing to such petitioner and said company, and after said hearing may order any reduction in the price of gas or electricity or an improvement in the quality thereof, and a report of such proceedings and the result thereof shall be included in the report required by section seventy-seven. The maximum price fixed by such order shall not thereafter be increased by said company except as provided in the following section.

NEW HAMPSHIRE, PUBLIC LAWS (1926).

Chapter 238. *Complaints and Investigations.*

SECTION 5. *Public Utilities.* Upon complaint made by the city council or mayor of any city, or by the selectmen of any town, in which a public utility is authorized to manufacture, sell or supply gas or electricity for heat, light or power, or to supply water, or to transmit telephone or telegraph messages, or upon the complaint in writing of not less than one hundred customers or subscribers of such public utility in cities of thirty thousand or more inhabitants, or of not less than fifty in cities of twenty thousand or more inhabitants, or of not less than twenty-five in any other city or town, or upon petition of a public utility, as to the quality of the service furnished by such public utility, or that the charges made therefor are excessive or insufficient, or concerning proposed future rates, the commission shall investigate as to the cause for such complaint or petition, and, after notice and hearing, may make such order, if any, as may in its opinion be necessary to establish just and reasonable rates or charges or to require the making of any reasonable and just improvements in service or methods.

SECTION 6. *Independent Inquiry.* The commission may, of its own motion, investigate or make inquiry in a manner to be determined by it, as to any rate charged or proposed to be charged or as to any act or thing done or omitted to be done by any railroad corporation or public utility, and the commission shall make such inquiry in regard to any act or thing

done or omitted to be done by any such railroad corporation or public utility in violation of any provision of law or order of the commission.

NEW YORK, PUBLIC SERVICE COMMISSION LAW, § 71 as amended by Laws of 1921, c. 134, §48.

§ 71. *Complaints as to quality and price of gas and electricity; investigation by commission; forms of complaints.* Upon the complaint in writing of the mayor of a city, the trustees of a village, or the town board of a town in which a person or corporation is authorized to manufacture, sell or supply gas or electricity for heat, light or power, or upon the complaint in writing of not less than twenty-five customers or purchasers of such gas or electricity, or upon complaint of a gas corporation or electrical corporation supplying said gas or electricity, as to the illuminating power, purity or pressure or the rates, charges or classifications of service of gas, the efficiency of the electric incandescent lamp supply, the voltage of the current supplied for light, heat or power, or the rates charged or classification of service of electricity sold and delivered in such municipality, the commission shall investigate as to the cause for such complaint. When such complaint is made, the commission may, by its agents, examiners and inspectors, inspect the works, system, plant, devices, appliances and methods used by such person or corporation in manufacturing, transmitting and supplying such gas or electricity, and may examine or cause to be examined the books and papers of such person, or corporation pertaining to the manufacture, sale, transmitting and supplying of such gas or electricity. The form and contents of complaints made as provided in this section shall be prescribed by the commission. Such complaints shall be signed by the officers, or by the customers, purchasers or subscribers making them, who must add to their signatures their places of residence, by street and number, if any.

WISCONSIN, STATUTES (1921).

Complaint by consumers. Section 1797m-43. Upon a complaint made against any public utility by any mercantile, agricultural or manufacturing society or by any body politic or municipal organization or by any twenty-five persons, firms, corporations or associations, that any of the rates, tolls, charges or schedules or any joint rate or rates are in any respect unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act whatsoever affecting or relating to the production, transmission, delivery or furnishing of heat, light, water or power or any service in connection therewith or the conveyance of any telephone message or any service in connection therewith is in any respect unreasonable, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, schedules, regulations, measurements, practice or act complained of shall be entered by the commission without a formal public hearing. (1907, c. 499.)



Supreme Court of the United States

OCTOBER TERM, 1915

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PUBLIC UTILITIES COMMISSION OF RICHIE
ISLAND, ALA.

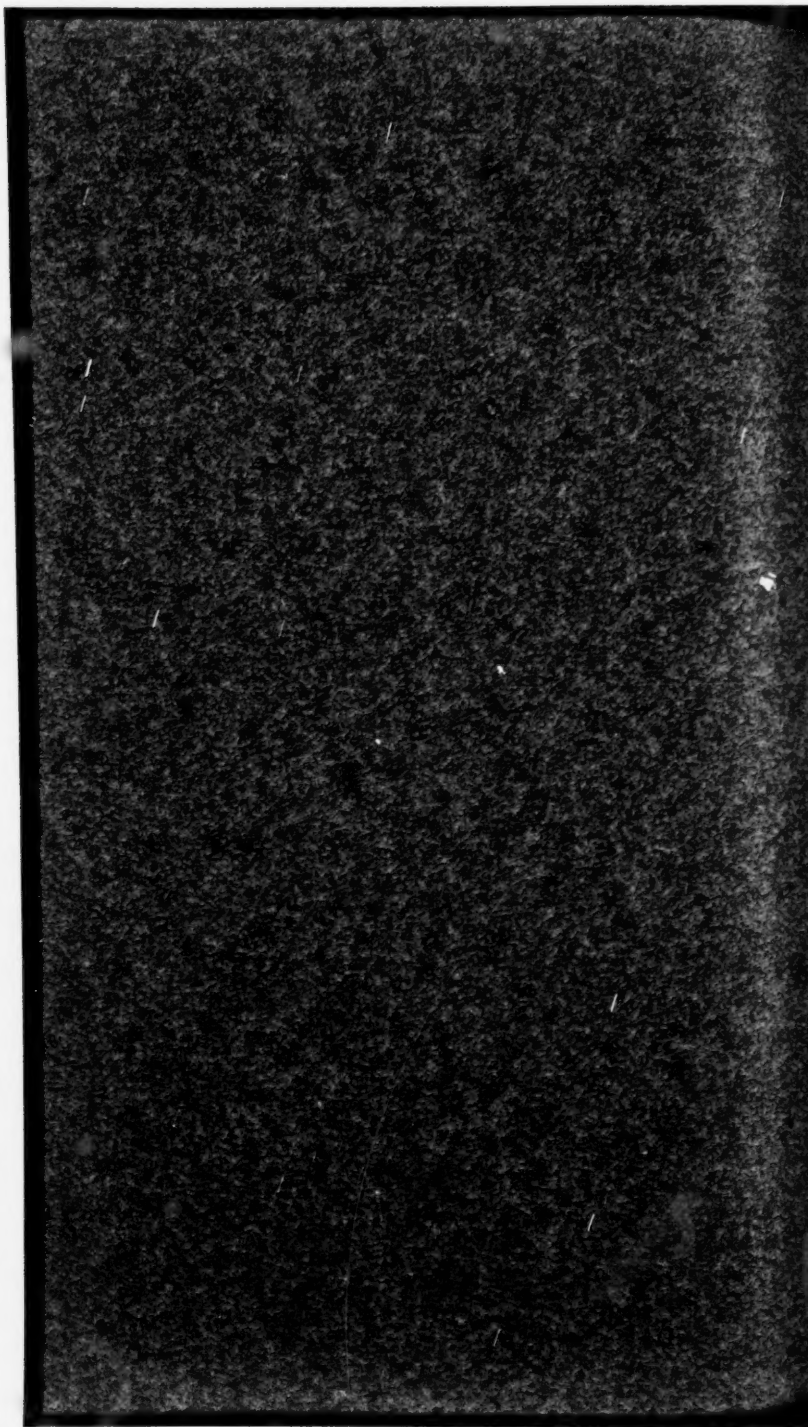
APPEAL

ATLEBORO STEAM & ELECTRIC COMPANY,

Respondent

BRIEF IN OPPOSITION TO PETITION FOR
CERTIORARI

WILLIAM H. DOUGLAS
COUNSELOR AT LAW
WASHINGTON, D. C.



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Supreme Court of the United States

OCTOBER TERM, 1925.

PUBLIC UTILITIES COMMISSION OF RHODE
ISLAND ET AL., *Petitioners,*

v.

ATTLEBORO STEAM & ELECTRIC COMPANY,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

The object of this petition is to have this court review a decree entered by the Supreme Court of Rhode Island on July 22, 1925, whereby that court sustained an appeal of the present respondent from an order made by the Public Utilities Commission of Rhode Island which purported to set aside a contract between the respondent and the Narragansett Electric Lighting Company (hereinafter called "the Narragansett Company") fixing the rate for electrical energy supplied by the Narragansett Company to the respondent and to establish a much higher rate for the same service. The court, in an opinion not yet officially reported but set out in the record (pp. 438-447), held in substance that the Public Utilities Commission had no jurisdiction to interfere with the contract and that its order was illegal and void.

Several federal questions were argued before the Supreme Court of Rhode Island and no contention is made by the respondent as to the jurisdiction of this court to review the decision,—so far as concerns these questions,—upon certiorari. It is submitted, however, that the present petition should be denied both as a matter of discretion and because the decision of the Supreme Court of Rhode Island was plainly right.

STATEMENT OF THE CASE.

The facts, so far as now material, may be summarized as follows:—

The respondent (which is a Massachusetts corporation) has been for many years engaged in supplying electricity for private and public consumption throughout the city of Attleboro, Massachusetts. The Narragansett Company was incorporated on May 29, 1884, by a special act of the General Assembly of Rhode Island, the first section of which is as follows and which is printed in full as an appendix to this brief:—

“Isaac M. Potter, James G. Markland, Samuel W. Peckham, Henry C. Bradford, Frederick I. Marcy, Martin V. Brady, Nathaniel T. Spink and John B. Allen, their associates, successors and assigns, are hereby constituted a corporation by the name of ‘The Narragansett Electric Lighting Company,’ for the purpose of prosecuting a general electric lighting, heating and power business; that is to say, the business of producing, using and supplying light, heat and power generated by means of electricity; and for the transacting of other business connected therewith; with all the powers and privileges, and subject to all the duties and liabilities set forth in chapters 152 and 155 of the Public Statutes, and in the statutes in amendment thereof, and in addition thereto.”

The chapters in the Public Statutes of Rhode Island, 1882, thus referred to are those entitled "Provisions respecting corporations in general" and "Of manufacturing corporations" respectively; neither of these chapters contains anything purporting to reserve to the State any authority to regulate rates or anything affecting the power of a corporation to contract with respect to its charges. Ever since its incorporation the Narragansett Company has maintained in Providence an electric generating plant and has supplied electricity in Providence and its vicinity.

The Public Utilities Commission was established by Chapter 795 of the Public Laws of 1912 of Rhode Island (known as the "Public Utilities Act"). Sections 1, 2, 3, 18, 20, 21, 26, 27, 28, 34 (in part), 39, 40 and 56 of this act are printed as an appendix to the petitioners' brief. It is believed that the only other parts of the act material to the present petition are §§ 34 (in full), 36, 37, 42 and 48, which are printed at the close of this brief.

Under date of May 8, 1917, the two companies entered into a contract whereby the Narragansett Company undertook to sell and deliver to the respondent during the term of twenty years from the date of the contract all the electrical energy then or at any time thereafter used by it and supplied to its customers in Attleboro, payment to be made at a rate specified in the contract and all such electrical energy to be delivered at the state line between the town of East Providence, Rhode Island, and the town of Seekonk, Massachusetts (Record, p. 256). The contract was not sought by the respondent, but was solicited by the Narragansett Company (Record, pp. 117, 136, 401). On May 14, 1917, the Narragansett Company filed with the Commission a schedule (designated as R. I. P. U. C. No. 68) setting out the rate specified in the contract, and requested that the same be approved as a special rate under § 42 of the Public

Utilities Act (Record, p. 253). This schedule, which is reproduced in full on page 275 of the Record, contains the following item:—

“TERM OF CONTRACT

“Twenty (20) years and thereafter unless discontinued by either party.”

On May 23, 1917, the Commission entered an order reciting that the Narragansett Company was “authorized to grant a special resale rate to the Attleboro Steam & Electric Company at the state line between Rhode Island and Massachusetts, said rate to be as shown in the tariff of said Narragansett Electric Lighting Company, R. I. P. U. C. No. 68” (Record, p. 390).

The two companies duly entered upon the performance of the contract and electricity has been supplied in accordance with its terms ever since, the respondent's plant having been dismantled (Record, p. 117). The Narragansett Company, however, presently became dissatisfied with the contract and on April 6, 1921, filed with the Commission a schedule entitled R. I. P. U. C. 101, which purported to supersede the rate specified in the contract and to establish a rate materially higher (Record, p. 391). On April 27, 1921, the Commission, after an *ex parte* hearing, made an order purporting to waive as to the proposed rate the requirements of § 48 of the Public Utilities Act respecting notice to the Commission and to the public (Record, p. 394). The Narragansett Company demanded that the respondent pay at the increased rate for all electrical energy furnished thereafter and threatened to cut off the supply if this demand were not complied with. The Attleboro Company thereupon brought in the United States District Court a suit to restrain the Narragansett Company from carrying out this threat. This suit was heard by Judge Brown, who rendered an opinion (which is made a part of the record

in the present case, pp. 1-22) leaving open the question whether the Commission had power after a formal public hearing to establish a rate inconsistent with that specified in the contract, but holding that, in any view of the case, the mere filing of a new rate by the Narragansett Company and waiving of the statutory notice by the Commission was not enough to relieve the Narragansett Company from its obligations under the contract.

Attleboro Steam & Electric Co. v. Narragansett Electric Lighting Co., 295 Fed. Rep. 895.

On April 4, 1924, there was entered in accordance with this opinion a final decree enjoining the Narragansett Company as prayed in the bill with a proviso to the effect that nothing contained in the decree should be construed as affecting the rights of the parties in case the Commission should assume after notice and a formal public hearing to establish a rate inconsistent with that specified in the contract.

On May 7, 1924, the Narragansett Company filed with the Commission a schedule designated as R. I. P. U. C. 125, setting out a rate applicable to all service rendered by the Narragansett Company to the respondent, which rate is materially higher than that specified in the contract and is otherwise inconsistent with the contract and with the provisions of the schedule R. I. P. U. C. 68 (Record, p. 29). On the same day the Commission, at the solicitation of the Narragansett Company (Record, p. 23), notified the respondent that on its own motion it ordered "an investigation and public hearing upon the question of whether the existing rates, tolls and charges of the Narragansett Electric Lighting Company now charged to the Attleboro Steam & Electric Company or those proposed to be charged to said company and other electric lighting companies under said rate schedule R. I. P. U. C. No. 125 cancelling R. I. P. U. C. No. 68

and No. 101 are unjust, unreasonable, insufficient or unjustly discriminatory or preferential or otherwise in violation of any of the provisions of the Public Utilities Act of the State of Rhode Island and otherwise upon the question as to the propriety of the proposed change or changes embodied in said Schedule No. 125," the hearing to be held on May 26, 1924. The reference in this notice to the rates charged to "other electric lighting companies under said rate schedule R. I. P. U. C. No. 125" was nugatory, because the respondent was avowedly the only customer affected by that schedule (Record, pp. 94, 96). Upon the opening of the hearing, the respondent appeared by its attorneys and represented that the Commission had no jurisdiction to hold the proposed investigation or to establish the rate specified in the schedule R. I. P. U. C. 125 in substitution for that specified in the contract and in the schedule R. I. P. U. C. 68 or to make any order inconsistent with the terms of the contract for the reason, among others, that any action so taken would be repugnant to the Constitution of the United States (Record, pp. 51-54). The Commission overruled all these jurisdictional objections and assumed to proceed with the hearing substantially as if the service in question was strictly intrastate and as if the only question was what rate for service rendered the respondent would yield the Narragansett Company the profit to which it conceived itself to be entitled upon its business generally. On January 21, 1925, the Commission filed an opinion which concluded as follows (Record, p. 420):—

"It is therefore ORDERED:

"(1) That the rates contained in Schedule R. I. P. U. C. No. 68 of the Narragansett Electric Lighting Company, are unjust, unreasonable, insufficient and unjustly discriminatory and preferential and otherwise in violation of the Public Utilities Act, and

"(2) That the rates contained in Schedule R. I. P. U. C.

No. 125 of the Narragansett Electric Lighting Company are just and reasonable, and may be allowed to become effective on all electricity delivered on and after February 1, 1925."

The respondent, being uncertain as to whether under the terms of the Public Utilities Act it had a right to appeal from the order of the Commission, filed simultaneously in the Supreme Court of Rhode Island a claim of appeal and a petition for certiorari. The grounds of appeal (Record, pp. 422-426) may be summarized as follows:—

- (a) The Commission acted without jurisdiction;
- (b) There was no evidence to justify the setting aside of the contract rate and the establishing of the new rate;
- (c) The Public Utilities Act, if construed as purporting to give the Commission jurisdiction to make the order in question, is repugnant to the Constitution of the United States—
 - (i) As improperly interfering with interstate commerce;
 - (ii) As depriving the respondent of the equal protection of the laws;
 - (iii) As depriving the respondent of its property without due process of law;
 - (iv) As impairing the obligation of the contract between the respondent and the State of Rhode Island implied in the Commission's approval of the contract;
- (d) If the Public Utilities Act be so construed, the Commission's order is repugnant to the Constitution of the United States for similar reasons;
- (e) The order of the Commission, even if not invalid as matter of law, is plainly wrong as opposed to the great weight of the evidence.

The Supreme Court of Rhode Island, after deciding that the respondent's remedy was by appeal, proceeded, without considering the many other points argued, to deal with the basic question whether it was competent for the State to fix the rates to be charged for an interstate service like that called for by the contract and came to the conclusion that it was not (Record, pp. 438-477). A final decree reversing the order of the Commission and directing that the proceeding be dismissed was accordingly entered (Record, p. 448).

ARGUMENT.

The grounds upon which the present petition is opposed are briefly these:—

1. The decision of the Supreme Court of Rhode Island upon the question of interstate commerce should not be disturbed both as a matter of discretion and because it was right on the merits.

2. Even if the ruling of the Supreme Court of Rhode Island had been wrong upon the question of interstate commerce, the result would have been the same, because the order of the Public Utilities Commission was in other respects subject to fatal constitutional objections.

(a) If the Public Utilities Act applies to service rendered to customers in other States, it so discriminates against them as to deprive them of the equal protection of the laws.

(b) The respondent under the order in question is deprived of its property without due process of law.

(c) The contract between the respondent and the Narragansett Company cannot be set aside without impairing the obligation of the contract between the respondent and the State of Rhode Island implied in the Commission's approval of the contract rate for the full term of twenty years.

3. The petitioners' contention that the Narragansett Company had by its charter power to contract only subject to regulation by the Public Utilities Commission was not raised in the state court and presents no federal question.

4. The state court has never decided that the Public Utilities Act according to its true construction gives the Commission jurisdiction to make an order like that in

question, even if the act would not be unconstitutional if so construed.

5. If the order of the Commission had not been open to jurisdictional objections, it must nevertheless have been reversed, because opposed to the great weight of the evidence.

I.

THE DECISION OF THE STATE COURT UPON THE QUESTION OF INTERSTATE COMMERCE SHOULD NOT BE DISTURBED.

The present case is peculiarly one in which any possible doubt as to the expediency of reviewing the decision of the state court should be resolved in favor of the respondent. What this court in the last analysis is asked to do is to mediate between two governmental agencies of the State of Rhode Island. The Public Utilities Commission acting upon its own initiative has assumed to take certain action and the Supreme Court, which under the statutes of Rhode Island has full jurisdiction in the premises, has adjudged that the Commission has exceeded its powers. If the tribunal duly established by the laws of Rhode Island to determine such questions has decided adversely to the Commission, this court will not, it is apprehended, be eager to disturb that decision. It is true, of course, that the immediate pecuniary interest involved is that of the Narragansett Company, which, while it did not initiate the proceedings in question, has been zealous in promoting them. This, however, does not alter the situation. The contract between the Narragansett Company and the respondent can be overridden, if at all, only because the public interest so demands; the benefit that will accrue to the Narragansett Company is of no consequence except as the

prosperity of that company may be of public benefit. The present petition, therefore, is really nothing but an attempt on the part of the State of Rhode Island to overturn a decision rendered by the body which it has established for the precise purpose of dealing with such matters. That it is not the function of this court thus to relieve the States from the decisions of their own tribunals seems too plain for discussion.

Even if viewed from the standpoint of the Narragansett Company, the case is not calculated to appeal to the discretion of the court. There is no contention that the contract was not freely and fairly made; as pointed out above, the Narragansett Company actually solicited it. There can be no question but that the contract is binding and ought to be performed unless either the State of Rhode Island or the United States has established some instrumentality whereby it may be abrogated. It is certain that the United States has taken no action of this kind; neither has the State of Rhode Island, according to the decision of its highest tribunal. After the State through its Supreme Court has thus declared that it cannot offer the Narragansett Company an implement whereby to break its contract, that company asks this court to decide that the State is mistaken as to the extent of its governmental machinery and that it really possesses such an implement, although its own court was unable to discover it. Even if the case were less clear on the merits than it is, the present petition might be disposed of on this ground.

The decision of the Supreme Court of Rhode Island was, however, plainly right. The petitioners concede that the transmission of electricity from one State to another constitutes interstate commerce. This being so, the only question is whether there is anything to take the case out of the general rule that rates for interstate service

rendered by a public utility cannot be fixed by state action. The petitioners are, of course, obliged to recognize the close parallel between the facts in this case and those in *Missouri v. Kansas Natural Gas Co.*, 265 U. S. 298. In the attempt to distinguish that case they rely upon two classes of cases, neither of which, it is submitted, has any bearing upon the present situation.

One of these classes relates to state laws establishing in general terms police regulations applicable to interstate and intrastate commerce alike. It has often been held that, while Congress may legislate on these subjects because such legislation is incidental to the power to regulate interstate commerce and while a federal statute so enacted is supreme, state laws dealing with matters of this kind do not constitute regulations of interstate commerce and so are valid in the absence of action by Congress. The principle was stated as follows by Mr. Justice Matthews in a leading case involving a state statute prescribing the qualifications of locomotive engineers:—

“The provisions on the subject contained in the statute of Alabama under consideration are not regulations of interstate commerce. It is a misnomer to call them such. Considered in themselves they are parts of that body of the local law which . . . properly governs the relation between carriers of passengers and merchandise and the public who employ them.”

Smith v. Alabama, 124 U. S. 465 (at p. 480).

This doctrine is irrelevant to the case at bar, because it has been recognized for many years that a statute or order prescribing the rates to be charged for interstate service is primarily and necessarily a regulation of interstate commerce.

Wabash, St. Louis & Pacific Railway v. Illinois, 118 U. S. 557.

The other class of cases cited by the petitioners deals with those few peculiar situations in which the business in question, although constituting interstate commerce, is so highly localized that it is regarded as consistent with the interstate commerce clause for the States to regulate such business in the absence of action by Congress. *Pennsylvania Gas Co. v. New York*, 252 U. S. 23, and *Public Utilities Commission v. Landon*, 249 U. S. 236, which are cited by the petitioners, are cases of this kind. The dissimilarity between those cases and the present is patent; in each the product, after being brought into the State, was broken up and distributed at retail and it was this retail distribution which the State was held competent to regulate. In other words, the situation was the same as would arise if Massachusetts should undertake to fix the rates at which electricity should be supplied by the respondent to its miscellaneous customers in Attleboro; the fact that the electric current came from outside the State would not affect the power of Massachusetts to fix rates unless Congress had enacted inconsistent legislation. In the case at bar, the service is not the distribution in one State of something produced in another State; the essence of the contract is the transmission of the product across the state line. The service is, moreover, strictly wholesale, the entire product being transmitted to a single recipient, who performs independently the local service of distribution. Under these circumstances, the Supreme Court of Rhode Island was clearly right in treating the following passage from the opinion in *Missouri v. Kansas Natural Gas Co.* (265 U. S. at p. 309) as controlling:—

“In both cases [*Public Utilities Commission v. Landon* and *Pennsylvania Gas Co. v. New York*] the things done were local and were after the business in its essentially national aspect had come to an end. The distinction which constitutes the basis of the present decision is

clearly recognized in the *Landon Case*. The business of supplying, on demand, local consumers is a local business, even though the gas be brought from another State and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance. But here the sale of gas is in wholesale quantities, not to consumers, but to distributing companies for resale to consumers in numerous cities and communities in different States. The transportation, sale and delivery constitute an unbroken chain, fundamentally interstate from beginning to end, and of such continuity as to amount to an established course of business. The paramount interest is not local but national, admitting of and requiring uniformity of regulation. Such uniformity, even though it be the uniformity of governmental nonaction, may be highly necessary to preserve equality of opportunity and treatment among the various communities and States concerned."

The petitioners further contend that, if Rhode Island cannot regulate the rates to be charged by the Narragansett Company for interstate service, the power to fix the rates charged to local consumers is to a certain extent restricted. That, of course, is true, but it is of no consequence, because the supposed difficulty is no different from that which always obtains when a public utility is rendering both intrastate and interstate service. The argument applies equally to railroad rates, for example, yet no one would pretend that it was of any force with regard to such rates. The passage which the petitioners on page 23 of their brief quote in this connection from Judge Brown's opinion (295 Fed. Rep. at p. 897) is of no significance, not only because it is a mere dictum, but because it antedates the decision in *Missouri v. Kansas*

Natural Gas Co., which establishes conclusively the immateriality of such considerations.

Another contention made by the petitioners is that the interstate service is only a small part of the service rendered by the Narragansett Company and that therefore the regulation of the interstate business should be deemed indirect and incidental. This argument is hardly consistent with the petitioners' other positions; if the interstate service is so small a part of the whole service performed by the Narragansett Company that the maxim *de minimis*, etc., applies,—for this is really what the argument comes to,—no hardship can result to Rhode Island consumers if the interstate business remains unregulated. Apart from this, however, the unsoundness of the contention is obvious. It is difficult to conceive of anything constituting a more direct regulation of interstate service than an order prescribing the rate at which it shall be performed. This is forcefully pointed out by the Supreme Court of Rhode Island in the case at bar (Record, pp. 446-447):—

“The intrastate and interstate business of the Narragansett Company can be segregated. This separation has actually been made by that company and the Commission in establishing a basis for the proposed new rate. The effect of the action of the Commission was direct on interstate commerce and incidental on local and state commerce. Such being the case there is no difference in principle because of the amount of interstate commerce involved, whether it is much or little, at wholesale or retail. The purpose of the state action is immaterial if the result is to impose a direct burden on interstate commerce.”

It is to be remembered in this connection, moreover, that the order now in question is not like a speed law, for example, which applies to all classes of traffic alike, but

is avowedly aimed solely at the respondent and will not affect any other consumer (Record, pp. 94, 96). Hence it is unnecessary to consider what the rule would be if the respondent was only one of many customers affected by the order and if the others were all in Rhode Island.

It is suggested that the present case is taken out of the usual rule by the fact that the electric current is delivered at the state line, so that the rate is in a sense the price charged for a sale at that line. This contention, it is believed, needs no serious discussion. It is well established that, if goods brought from without a State are offered for sale at a point within the State in the original packages and before they have become mingled with the general mass of property within the State, the sale is not subject to state regulation. *A fortiori*, a State cannot fix the price to be charged when the seller stands on one side of the state line and the buyer on the other and the sale is effected by handing the goods across. The following language from the opinion in *Missouri v. Kansas Natural Gas Co.* is directly in point (265 U. S. at p. 308):—

“The sale and delivery here is an inseparable part of a transaction in interstate commerce—not local but essentially national in character,—and enforcement of a selling price in such a transaction places a direct burden upon such commerce inconsistent with that freedom of interstate trade which it was the purpose of the commerce clause to secure and preserve. It is as though the commission stood at the state line and imposed its regulation upon the final step in the process at the moment the interstate commodity entered the State and before it had become a part of the general mass of property therein.”

The principle applies, of course, to burdens placed upon products going out of a State no less than to burdens upon those coming into it. As was said by Mr.

Justice VanDevanter in *Pennsylvania v. West Virginia*, 262 U. S. 553 (at p. 596):—

“Natural gas is a lawful article of commerce and its transmission from one State to another for sale and consumption in the latter is interstate commerce. A state law, whether of the State where the gas is produced or that where it is to be sold, which by its necessary operation prevents, obstructs or burdens such transmission, is a regulation of interstate commerce,—a prohibited interference.”

A final point urged by the respondents is that the Narragansett Company is operating under franchises granted by the State whose power to regulate its rates is in question, relying on the concluding words of the opinion in *Missouri v. Kansas Natural Gas Co.* (265 U. S. at p. 310):—

“That some or all of the distributing companies are operating under state or municipal franchises cannot affect the question. It is enough to say that the Supply Company is not so operating and is not made a party to these franchises by merely doing business with the franchise holders.”

The short answer to this argument is that the record discloses nothing as to the character of the franchises under which the Narragansett Company is rendering the service in question beyond the bare fact that its right to maintain wires in the highways, etc., has presumably been granted by the State or by some municipality. This alone is plainly immaterial. Almost every public utility operates under state or municipal franchises and if this mere fact, regardless of the terms of the franchises, gave the State the power to regulate interstate service, there would be very few cases in which the existence of such power could be denied. The statute of 1917, quoted in the petitioners' brief, was not brought

to the attention of the court below and is, in any event, immaterial. There is no evidence that the Narragansett Company has exercised the rights conferred by this statute. It seems obvious, moreover, that the fact that a corporation enjoys the right of eminent domain does not subject its interstate business to state regulation; if this were otherwise, the States could fix railroad rates *ad libitum*. The idea that, if the Narragansett Company continues to perform its contract with the respondent, its franchises may be forfeited is too fanciful for lengthy discussion. The Narragansett Company cannot be penalized by the State for doing something with which the State is forbidden by the federal constitution to interfere.

II.

EVEN IF THE RULING OF THE STATE COURT UPON THE QUESTION OF INTERSTATE COMMERCE HAD BEEN WRONG, THE RESULT WOULD HAVE BEEN THE SAME, BECAUSE THE ORDER OF THE PUBLIC UTILITIES COMMISSION WAS IN OTHER RESPECTS SUBJECT TO FATAL CONSTITUTIONAL OBJECTIONS.

- (a) *If the Public Utilities Act applies to Service rendered to Customers in other States, it so discriminates against them as to deprive them of the equal Protection of the Laws.*

While the order of the Public Utilities Commission proceeds on the assumption that the respondent is subject to all the burdens of the statute, it is apparent that, being a foreign corporation, the respondent enjoys none of its benefits. Section 18 of the Public Utilities Act gives the right to invoke the power of the Commission

only to "any city or town council, any corporation or any twenty-five qualified voters." It is obvious that "any city or town council" includes only municipal agencies in Rhode Island and that, in like manner "qualified voters" means "voters qualified in Rhode Island." Theoretically, of course, the word "corporation" is broad enough to include a corporation organized and doing business anywhere, but the necessary inference from the context is that only corporations doing business in Rhode Island are intended.

Commonwealth v. Boston, 97 Mass. 555.

It follows that, if the act is construed as applicable to service rendered to customers in other States, it subjects such customers to its burdens but gives only residents of Rhode Island its benefits; nonresidents, therefore, are deprived of the equal protection of the laws, so that, as applied to them, the act is repugnant to the Fourteenth Amendment.

Kentucky Finance Corporation v. Paramount Auto Exchange Corporation, 262 U. S. 544.

Travis v. Yale & Towne Manuf. Co., 252 U. S. 60.

Southern Railway v. Greene, 216 U. S. 400.

(b) *The Respondent under the Order in Question is deprived of its Property without due Process of Law.*

The petitioners argue that the State may in the exercise of the police power set aside contracts between public utilities and individual customers when the public good demands. This doctrine is, of course, well established, but it is subject to the important qualification that the overriding of contracts solemnly entered into is an

extreme measure and that the mere fact that a contract turns out to be unprofitable to those furnishing the service is not a sufficient reason for setting it aside, especially when no customer is making complaint and when, as here, the absence of profit was foreseen at the time the contract was made (Record, pp. 136-137, 146-147, 255). In order to justify the impairing of the obligation of such a contract, it must be shown that, if the contract remains in force, the effect will be not simply to reduce the company's profits, but to prevent it from rendering adequate service to its other customers. The principle was stated as follows by Mr. Justice Sutherland in *Arkansas Natural Gas Co. v. Arkansas Railroad Commission*, 261 U. S. 379 (at p. 383):—

“The power to fix rates, when exerted, is for the public welfare, to which private contracts must yield; but it is not an independent legislative function to vary or set aside such contracts, however unwise and unprofitable they may be. Indeed, the exertion of legislative power solely to that end is precluded by the contract-impairment clause of the Constitution. The power does not exist *per se*. It is the intervention of the public interest which justifies, and, at the same time, conditions, its exercise.”

This passage was quoted by Judge Brown as applicable to the present situation (295 Fed. Rep. at p. 901). He further said:—

“The finding that the contract was unprofitable and therefore discriminatory . . . is a non-sequitur.”

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“Before a contract can be interfered with under the police power, it must appear that the contract does in some manner affect adversely the welfare of the public.

“There is nothing in the records to show that the defendant brought to the notice of the Commission any evidence

that the company would be unable to perform its full duty to the community whose interest it is the function of the Commission to protect."

In the brief for the petitioners (p. 35) it is said with reference to this part of Judge Brown's opinion that from this it appears that the ground of his decision was "that there was no proper finding of facts after a hearing." If this means that, if the first attempt of the Commission to abrogate the contract had been based upon the same evidence as the second, Judge Brown would have held the action of the Commission justifiable, it is a manifest misconception. What the judge ruled in substance was that there must be something more than the remote detriment to the public theoretically resulting from the existence of an unprofitable contract to warrant the abrogation of such a contract, whereas the evidence upon which the order of January 21, 1925, purported to be based presented no suggestion whatever of real detriment to the public.

Such detriment, it is manifest, can arise only in two ways; either the enjoyment of the contract rate by the respondent may cause other customers to receive less favorable rates than they are entitled to or the Narragansett Company's earnings may be so reduced as to impair its ability to secure the capital needed in order to provide adequate service. There is not the slightest suggestion either in the findings of the Commission or in the evidence that either of these conditions obtains. It is not pretended that the Narragansett Company's rates to other customers are not eminently reasonable or that the service rendered them is in any way inadequate; as to its financial condition, it appears that its gross earnings have increased from \$2,566,000 in 1917 to \$6,600,000 in 1923; that for the year 1923 it had a net divisible income of \$1,595,848.94, and that, after paying

dividends at the rate of 8 per cent., there remained a surplus of \$293,392.94, also that for the first three months of 1924, after making provision for dividends at the same rate and notwithstanding a reduction in the charges for certain classes of service, there was a surplus of \$248,969.02 (Record, pp. 102-103, 123). Throughout the entire period since the making of the contract, the Narragansett Company has paid 8 per cent. dividends; its stock now sells substantially on a 6 per cent. basis (Record, p. 176). The difference between the Narragansett Company's income from service rendered the respondent under the contract rate and that under the rate fixed by the Commission is estimated at \$50,000 per year (Record, p. 86), which represents so small a proportion of the company's total income as to make preposterous the suggestion that the company's ability to serve its Rhode Island customers will be perceptibly affected if the contract is not set aside.

At the hearing before the Commission there were introduced certain tabulations purporting to show that a loss has resulted each year under the contract and that this loss will increase during the remainder of the contract period. It is not alleged, however, that the loss will endanger the dividend rate (Record, p. 102). Besides this, the question is as to whether the contract may properly be abrogated *now*; whatever the rights of the parties might be if the contract should hereafter become more onerous, it certainly cannot be set aside at this time because of conjectural difficulties in the future.

The order of the Commission has the effect of depriving the respondent of its property without due process of law for the further reason that, even if there had been evidence justifying the setting aside of the contract, the Commission was not on any theory warranted in

going further by way of increasing the rate than was absolutely necessary to relieve the supposed exigency. The present case, in other words, involves in reverse form the principle that rates duly established by the State cannot be pronounced too low simply because they yield a less profit than may seem fair from the standpoint of the utility or expedient from that of the public; they must be actually confiscatory before they can be interfered with.

Detroit & Mackinac Railway v. Railroad Commission, 203 Fed. Rep. 864; affirmed 235 U. S. 402.

So here, the rate cannot be fixed as if the contract did not exist and as if the only question was what rate would yield what is supposed to be a normal profit; a rate fixed by a valid contract can be raised only to such extent as is absolutely demanded by the public necessity, even though the rate as so raised may be less than might be deemed reasonable on general principles. The Commission, however, made no finding on this vital point. The contention of the Narragansett Company was that it was entitled to a profit of 8 per cent. on its business generally and that the rate for service rendered to the respondent should be so raised that the return on the investment devoted to the furnishing of this service would reach that figure (Record, pp. 57, 229). It was virtually conceded, however, that only about \$23,700 of additional income was needed annually to offset the increase in generating cost since the contract was made, yet a rate calculated to bring in each year at least \$50,000 more than the old rate was asked for. The Commission in substance adopted this contention, as appears from the following passage in its decision (Record, p. 419):—

“The Commission find that under present conditions a return of approximately 8% on the value of the invest-

ment devoted to the furnishing of service to the Attleboro Company is a reasonable return and that considering all the evidence submitted, service by the Narragansett Company under schedule R. I. P. U. C. No. 125 will yield to the Narragansett Company approximately 8% on the investment devoted by the Narragansett Company to the furnishing of such service."

The Commission, in other words, went about the fixing of the rate exactly as if the contract did not exist. It follows that, even if there had been justification for setting the contract aside, the rate actually fixed would still subject the respondent to an unwarrantable burden and deprive it of its property without due process of law.

- (c) *The Contract between the Respondent and the Narragansett Company cannot be set aside without impairing the Obligation of the Contract between the Respondent and the State of Rhode Island implied in the Approval of the original Rate.*

It appears from the petitioners' brief (pp. 31-32) that the respondent's position on this branch of the case has been misunderstood. The respondent has never contended that, if the order of the Commission were valid in other respects, it could be attacked as impairing the obligation of the contract between the respondent and the Narragansett Company. The contract as to which this constitutional provision is invoked is the contract between the respondent and the State of Rhode Island implied in the Commission's approval of the contract and the rule of law relied on is the elementary one that a contract entered into by the State with respect to the rates to be charged by a public utility is no less binding than other contracts. Unless the right to fix different rates is expressly or impliedly reserved, the

State cannot, without impairing the obligation of the contract, establish inconsistent schedules.

St. Cloud Public Service Co. v. St. Cloud, 265
U. S. 352.

Southern Iowa Electric Company v. Chariton,
255 U. S. 539.

Cleveland v. Cleveland City Railway, 194
U. S. 517.

Detroit v. Detroit Citizens' Street Railway,
184 U. S. 368.

In the present case, the 20-year term was as much an essential part of the rate embodied in the Schedule R. I. P. U. C. 68 as the price to be charged. The petitioners are mistaken when they say on page 28 of their brief that "the order provided that the said rate should be as shown in Schedule No. 68 of the Narragansett Company," but "avoided any mention of the period of time for which the contract rate was to be effective." The schedule expressly recited "Term of contract twenty (20) years and thereafter unless discontinued by either party" (Record, p. 276). Hence the approval of the contract rate by the Commission,—assuming that the Commission had jurisdiction in the matter at all,—necessarily imported a finding that it was consistent with the public interest that the Narragansett Company be permitted to take upon itself the obvious risk that, as a result of unforeseen conditions, the rate might prove unremunerative. Hence the State, by the approval of the rate, bound itself not to take inconsistent action during the twenty-year period. It is not competent for the State, under color of exercising the police power, to reverse the finding made by its officers when the rate was first submitted and in effect to say that they made a mistake, so that their adjudication may now be treated as nugatory, especially after this adjudication has been

acted upon and the position of the respondent radically changed in reliance upon it; the State must be deemed to have entered into a contract not to disturb the rate for the period specified.

New York & Queens Gas Co. v. Prendergast,
1 Fed. Rep. (2d), 351.

State v. Marshall, 98 Ohio St. 467.

III.

THE PETITIONERS' CONTENTION THAT THE NARRAGANSETT COMPANY HAD BY ITS CHARTER POWER TO CONTRACT ONLY SUBJECT TO REGULATION BY THE PUBLIC UTILITIES COMMISSION PRESENTS NO FEDERAL QUESTION.

The suggestion that the Narragansett Company's charter should be construed as limiting its power to contract was not advanced before the Supreme Court of Rhode Island and cannot now be made for the first time.

Wilson v. McNamee, 102 U. S. 572, 574.

Rogers v. Ritter, 12 Wall. 317, 320.

Apart from this the interpretation of the charter is exclusively a question of state law. The court below evidently proceeded on the assumption that the *capacity* of the Narragansett Company to make contracts like that in question was as ample as the *capacity* of an individual to make similar contracts. It is, of course, true that corporations and individuals alike are subject to the police power, but this does not affect the *capacity* of corporations to contract any more than it affects the *capacity* of individuals. If the state court should have decided that the Narragansett Company had no corporate power to make a rate contract not susceptible of abro-

gation by the Public Utilities Commission, the error cannot be corrected here.

Munday v. Wisconsin Trust Co., 252 U. S. 499.

Cusack Co. v. Chicago, 242 U. S. 526.

Even if the question were open in this court, however, there would be no merit in the respondent's contention. The Narragansett Company's charter is in the broadest terms and contains nothing to suggest that the State reserves any power of regulation, except as such a reservation may be implied in the charter of every public service corporation. That this implied reservation,—whatever it may amount to,—does not affect the situation is demonstrated by the fact that, if the petitioners' contention were sound, the charges for interstate service rendered by every domestic corporation would be subject to regulation by the State *ad libitum*, with the result that a great part of the cases involving the power of the States to deal with interstate commerce would necessarily have been decided the other way. It has never been imagined, for example, that the rates for interstate service rendered by a domestic railroad company were subject to state regulation any more than the rates for such service rendered by a foreign corporation, yet the distinction must exist if the petitioners' argument is well grounded.

IV.

THE STATE COURT HAS NEVER DECIDED THAT THE PUBLIC UTILITIES ACT, ACCORDING TO ITS TRUE CONSTRUCTION, GIVES THE COMMISSION JURISDICTION TO MAKE AN ORDER LIKE THAT IN QUESTION, EVEN IF THE ACT WOULD NOT BE UNCONSTITUTIONAL IF SO CONSTRUED.

The petitioners in their brief (p. 36) assert that "there is no question as to the jurisdiction of the Commission to make the order." This assertion is based on a few words taken out of their context in the opinion of the Supreme Court of Rhode Island. The entire sentence from which these words are extracted is as follows (Record, p. 442):—

"The Attleboro Company challenges this order and claims it is unauthorized and void on various grounds; the principal and decisive objection, in our judgment, is that said order is an improper interference by the State with interstate commerce."

When this sentence is read in connection with the points set up in the respondent's claim of appeal, it is patent that the court is simply stating in a summary way the respondent's basic argument, *i.e.*, that the whole subject matter of the order was outside the State's power of regulation, and was not assuming to decide adversely to the respondent as to its other contentions. If upon this fundamental ground the respondent was entitled to succeed in any event, discussion of the various preliminary objections became superfluous. Had it become necessary to determine whether, as a matter of statutory construction, the order was within the Commission's jurisdiction, the court might well have reversed the order on that ground.

Section 2 of the act purports to extend the power of the Commission to the regulation of every corporation,

etc., owning or operating "any railroad or street railway within this state" and to every corporation, etc., owning or operating "any plant . . . within this state . . . for the production . . . of gas, electricity," etc. It is apparent that, in order to escape fatal constitutional difficulties, the broad language as to railroads and street railways must be taken with the implied qualification that interstate service is not within the purview of the act. Even assuming that the clause as to gas, electricity, etc., would not necessarily be so construed if it stood alone, the significant fact is that this clause appears as a part of the same sentence as the clause respecting railroads and street railways and is substantially identical in frame. When the legislature used in the clause as to railroads and street railways language having a well-defined meaning as applied to those subjects and immediately thereafter in the same sentence used similar language with respect to gas and electricity, the presumption is that the words were used in the same sense in the later clause as in the earlier.

Gillen's Case, 215 Mass. 96, 98.

As has been pointed out above, moreover, the right to invoke the power of the Commission is limited by §18 of the act to residents of Rhode Island. Even if this discrimination between residents and nonresidents did not affect the constitutionality of the act, there would still be a presumption that the legislature did not intend to regulate transactions with nonresidents. Very explicit language would be necessary to warrant the conclusion that such an unfair discrimination was intended, even if constitutionally permissible. On the other hand, it is not difficult to infer that the legislature, perceiving the complications which would at once be encountered if it were attempted to regulate interstate transactions, preferred to leave such transactions outside the scope of the act.

V.

IF THE ORDER OF THE COMMISSION HAD NOT BEEN OPEN TO JURISDICTIONAL OBJECTIONS, IT MUST NEVERTHELESS HAVE BEEN REVERSED, BECAUSE OPPOSED TO THE GREAT WEIGHT OF THE EVIDENCE.

The petitioners do not contest the respondent's right under §§ 34, 36 and 37 of the Public Utilities Act to have the Commission's findings of fact reviewed substantially as upon an appeal in equity.

Ohio Valley Water Co. v. Ben Avon Borough,
253 U. S. 287.

Oregon Railroad & Navigation Co. v. Fairchild,
224 U. S. 510.

Rivelli v. Providence Gas Co., 44 R. I. 76.

If it became necessary to go into this phase of the case a most searching examination of this voluminous record would be called for. Without repeating at the present time the extended argument which was submitted to the Supreme Court of Rhode Island upon this point, it may be enough to say that the respondent believes that the Commission's findings of fact were grossly erroneous and is confident that this can be demonstrated to the satisfaction of any impartial tribunal. Moreover, the rate actually fixed would still be most unreasonable, even if the propriety of making *some* increase were established; the rate which the Commission assumed to fix yields, on the Narragansett Company's own figures, much more than is needed to offset the supposed increase in plant and operating costs.

Before the petitioners can justly invoke the extraordinary remedy of certiorari, they should make it appear that there is at least a fair probability that, if the decree of the Supreme Court of Rhode Island were reversed

and the case remanded for a hearing upon these questions of fact, the respondent would not prevail. Their argument on this point, however, amounts to little more than an assertion that the Commission was right. For this reason, if for no other, the present petition should be denied.

ROBERT G. DODGE.
ARCHIBALD C. MATTESON.
HAROLD S. DAVIS.

APPENDIX

RHODE ISLAND LAWS OF MAY, 1884, PAGE 29,—
"AN ACT TO INCORPORATE THE NARRAGAN-
SETT ELECTRIC LIGHTING COMPANY"

(Passed May 29, 1884.)

It is enacted by the General Assembly as follows:

SECTION 1. Isaac M. Potter, James G. Markland, Samuel W. Peckham, Henry C. Bradford, Frederick I. Marcy, Martin V. Brady, Nathaniel T. Spink and John B. Allen, their associates, successors and assigns, are hereby constituted a corporation by the name of "The Narragansett Electric Lighting Company," for the purpose of prosecuting a general electric lighting, heating and power business; that is to say, the business of producing, using and supplying light, heat and power generated by means of electricity; and for the transacting of other business connected therewith; with all the powers and privileges, and subject to all the duties and liabilities set forth in chapters 152 and 155 of the Public Statutes, and in the statutes in amendment thereof, and in addition thereto.

SEC. 2. The capital stock of said corporation shall not exceed one hundred and fifty thousand dollars, to be fixed in amount from time to time, and to be divided into such number of shares, and the par value of each share to be fixed at such amount as the corporation may by vote determine; and said shares shall be non-assessable.

SEC. 3. The stock or shares of every stockholder shall be pledged and liable to the corporation for all debts and demands due and owing from such stockholder to the corporation, and whether overdue or due at a future day; and said stock or shares may be sold for the payment of such debts and demands in such manner as the by-laws of said corporation may prescribe; and in case the proceeds of such sale shall be insufficient to discharge such debts or demands, with the incidental expenses of sale, the corporation may have their action against the debtor for the balance due.

SEC. 4. Said corporation, with the consent of the town and

city councils where wires and conductors for electricity are to be put up, laid, used and maintained, may put up, lay, use and maintain wires and conductors for electricity, under and over highways, streets and sidewalks, and, with the written consent of the owners thereof, upon and over buildings, subject to such ordinances, regulations and orders of the city and town councils of the cities or towns where such wires or conductors shall be maintained, as are or may be enacted with respect to such wires and conductors; and said wires and conductors located above any highway shall be removed whenever required by general law or by order of such city or town council, after thirty days notice in writing shall be given to said corporation; and said corporation shall be entitled to no compensation on account of such removal.

SEC. 5. There shall be an annual meeting of the stockholders, in the city of Providence, at such time as the by-laws shall prescribe, for the choice of officers, and for such other business as may come before them.

SEC. 6. Said corporation shall have an office or place of business in the city of Providence.

SEC. 7. This act shall take effect from and after its passage.

EXTRACTS FROM THE PUBLIC UTILITIES ACT OF RHODE ISLAND
(CHAPTER 795 OF THE PUBLIC LAWS OF 1912, AS AMENDED
BY CHAPTER 1651 OF THE PUBLIC LAWS OF 1918).

SEC. 34. Any public utility or any complainant, aggrieved by any order of the commission fixing any rate, toll, charge, joint rate or rates, or any order fixing any regulation, measurement, practice, act or service, may appeal to the supreme court for a reversal of such order on the ground that the rate, toll, charge, joint rate or rates, fixed in the order are unlawful or unreasonable, or that any such regulation, measurement, practice, act or service fixed in such order is unlawful or unreasonable.

The party prosecuting the appeal shall file a petition with the clerk of the supreme court within seven days from the

service of the order appealed from, and such petition shall set forth the grounds upon which it is claimed that the order appealed from is unlawful or unreasonable. Thereupon the clerk of the supreme court shall issue citation to all parties in interest, including the commission, returnable at any time within thirty days from date of its issue in the discretion of the court, and the court shall hear and determine, as soon as may be, the matter, and either sustain or reverse the order appealed from. The court is hereby given authority to regulate the practice and procedure in such appeal by such rules as it may see fit to make: PROVIDED, that all such appeals shall have precedence over other civil cases in the supreme court.

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SEC. 36. At any hearing in the course of such an appeal a transcript of the testimony before the commission in such case, duly certified by the stenographer taking the same, and allowed by one of the commissioners, shall be admitted as testimony.

SEC. 37. If, upon the hearing of the appeal, newly discovered evidence shall be introduced by the appellant which is found by the court to be of such a character, and of sufficient importance, to warrant a reconsideration of the order appealed from, the court, before proceeding to render a final decision, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission and shall stay further proceeding in said action for sixty days from the date of such transmission. Upon the receipt of such evidence the commission shall consider the same and may alter, amend or rescind the order appealed from, and shall report its action thereon to the court within fifty days from the receipt of such evidence. If the commission shall rescind the order appealed from, the appeal shall be dismissed. If it shall alter, or amend the same, such altered or amended order shall take the place of the original order appealed from and the court shall render its decree thereon as though made by the commission in the first instance. If the original order shall not be altered, amended or rescinded

by the commission, the final decision shall be rendered upon such original order and the final decree entered in conformity therewith.

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SEC. 42. The provisions of Sections thirty-nine, forty and forty-one of this act shall be subject to the following exceptions:

(a) A public utility may issue or give free transportation or service to its employees and their families, its officers, agents, surgeons, physicians and attorneys-at-law, and to the officers, agents, and employees, and their families of any other public utility.

(b) With the approval of the commission any public utility may give free transportation or service, upon such conditions as such public utility may impose, or grant special rates therefor to the state, to any town or city, or to any water or fire district, and to the officers thereof, for public purposes, and also to any special class or classes of persons, not otherwise referred to in this section, in cases where the same shall seem to the commission just and reasonable, or required in the interests of the public, and not unjustly discriminatory.

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SEC. 48. (*As amended by Chapter 1651, Pub. Laws, 1918.*) Every public utility shall file with the commission within a time to be fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection therewith or performed by any public utility controlled or operated by it. A copy of so much of said schedules as the commission shall deem necessary for the use of the public shall be printed in plain type, or typewritten, and kept on file in every station or office of such public utility where payments are made by the consumers or users, open to the public in such form and place as to be readily accessible and conveniently inspected, and as the commission may order. The commission may determine and prescribe the form in which the schedules, required by this section to be kept open

to public inspection, shall be prepared and arranged, provided, that with respect to public utilities subject to the federal "Act to Regulate Commerce," so-called, the form of such schedules shall be that from time to time prescribed by the Interstate Commerce Commission. No change shall be made in the rates, tolls, and charges which have been filed and published by any public utility in compliance with the requirements of this section, except after thirty days' notice to the commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rates, tolls or charges will go into effect. Whenever the commission receives such notice of any change or changes proposed to be made in any schedule filed under the provisions of this section, it shall have power either upon complaint as specified in Section eighteen hereof, or upon its own motion and upon such notice as provided for in Section twenty hereof to hold a public hearing and make investigation as to the propriety of such proposed change or changes. After notice of any such investigation, the commission shall have power by any order served upon the public utility affected to suspend the taking effect of such change or changes pending the decision thereon, but not for a longer period than three months beyond the time when such change or changes would otherwise take effect. After such hearing and investigation either upon complaint as specified in Section eighteen hereof or upon its own motion, the commission may make such order in reference to any proposed rate, toll or charge as may be proper. At any such hearing involving any proposed increase in any rate, toll or charge, the burden of proof to show that such increase is necessary in order to obtain a reasonable compensation for the service rendered shall be upon the public utility: PROVIDED, that the commission may, in its discretion and for good cause shown, allow changes within less time than required by the notice herein specified, and without holding the hearing and investigation herein provided for or modify the requirements of this section with respect to filing and publishing tariffs either in the particular instance or by general order applicable to special or particular circumstances or conditions.

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Supreme Court of the United States

OCTOBER TERM, 1926.

PUBLIC UTILITIES COMMISSION OF RHODE
ISLAND ET AL., *Petitioners,*

v.

ATTLEBORO STEAM & ELECTRIC COMPANY,
Respondent.

BRIEF FOR THE RESPONDENT.

On July 22, 1925, the Supreme Court of Rhode Island entered a decree sustaining an appeal of the present respondent from an order made by the Public Utilities Commission of Rhode Island which purported to set aside a contract between the respondent and the Narragansett Electric Lighting Company (hereinafter called "the Narragansett Company") fixing the rate for electrical energy supplied by the Narragansett Company to the respondent and to establish a much higher rate for the same service. In an opinion reported in 46 R. I. 496 and set out in the present record at pages 438 to 447 the court held in substance that the Public Utilities Commission had no jurisdiction to interfere with the contract and that its order was illegal and void.

On October 26, 1925, this court granted a writ of certiorari to review the decision of the state court (269

U. S. 546). Several federal questions were argued before the state court and no contention is made by the respondent as to the jurisdiction of this court to review the decision,—so far as concerns these questions,—upon certiorari. It is submitted, however, that the decision of the state court must be affirmed both for the reason assigned in the opinion and for other reasons not discussed by the court below because immaterial in view of its conclusion on the point dealt with.

STATEMENT OF THE CASE.

The facts, so far as now pertinent, may be summarized as follows:—

The respondent (which is a Massachusetts corporation) has been for many years engaged in supplying electricity for private and public consumption throughout the city of Attleboro, Massachusetts. The Narragansett Company was incorporated on May 29, 1884, by a special act of the General Assembly of Rhode Island, the first section of which is as follows and which is printed in full in the appendix to this brief:—

“Isaac M. Potter, James G. Markland, Samuel W. Peckham, Henry C. Bradford, Frederick I. Marcy, Martin V. Brady, Nathaniel T. Spink and John B. Allen, their associates, successors and assigns, are hereby constituted a corporation by the name of ‘The Narragansett Electric Lighting Company,’ for the purpose of prosecuting a general electric lighting, heating and power business; that is to say, the business of producing, using and supplying light, heat and power generated by means of electricity; and for the transacting of other business connected therewith; with all the powers and privileges, and subject to all the duties and liabilities set forth in chapters 152 and 155 of the Public Statutes, and in the Statutes in amendment thereof, and in addition thereto.”

The chapters in the Public Statutes of Rhode Island, 1882, thus referred to are entitled "Provisions respecting corporations in general" and "Of manufacturing corporations" respectively and it is not alleged by the petitioners that either of them contains anything purporting to reserve to the State any power to regulate rates. Ever since its incorporation the Narragansett Company has maintained in Providence an electric generating plant and has supplied electricity in Providence and its vicinity.

The Public Utilities Commission was established by Chapter 795 of the Public Laws of 1912 of Rhode Island (known as the "Public Utilities Act" and now constituting Chapter 253 of the General Laws of Rhode Island, 1923). The parts of the act material to the present case are §§ 1, 2, 3, 18, 20, 21, 26, 27, 28, 33, 34, 36, 37, 39, 40, 42, and 48, which are printed at the close of this brief.

Under date of May 8, 1917, the two companies entered into a contract whereby the Narragansett Company undertook to sell and deliver to the respondent during the term of twenty years from the date of the contract all the electrical energy then or at any time thereafter used by it and supplied to its customers in Attleboro, payment to be made at a rate specified in the contract and all such electrical energy to be delivered at the state line between the town of East Providence, Rhode Island, and the town of Seekonk, Massachusetts (Record, p. 256). The contract was not sought by the respondent, but was solicited by the Narragansett Company (Record, pp. 117, 136, 401). On May 14, 1917, the Narragansett Company filed with the Commission a schedule (designated as R. I. P. U. C. No. 68) setting out the rate specified in the contract and requested that the same be approved as a special

rate under § 42 of the Public Utilities Act (Record, p. 253). This schedule, which is reproduced in full on page 275 of the Record, contains the following item:--

"TERM OF CONTRACT

"Twenty (20) years and thereafter unless discontinued by either party."

On May 23, 1917, the Commission entered an order reciting that the Narragansett Company was "authorized to grant a special resale rate to the Attleboro Steam & Electric Company at the state line between Rhode Island and Massachusetts, said rate to be as shown in the tariff of said Narragansett Electric Lighting Company, R. I. P. U. C. No. 68" (Record, p. 390).

The two companies duly entered upon the performance of the contract and electricity has been supplied in accordance with its terms ever since, the respondent's plant having been dismantled (Record, p. 117). The Narragansett Company, however, presently became dissatisfied with the contract and on April 6, 1921, filed with the Commission a schedule entitled R. I. P. U. C. 101, which purported to supersede the rate specified in the contract and to establish a rate materially higher (Record, p. 391). On April 27, 1921, the Commission, after an *ex parte* hearing, made an order purporting to waive as to the proposed rate the requirements of § 48 of the Public Utilities Act respecting notice to the Commission and to the public (Record, p. 394). The Narragansett Company demanded that the respondent pay at the increased rate for all electrical energy furnished thereafter and threatened to cut off the supply if this demand were not complied with. The Attleboro Company thereupon brought in the United States District Court a suit to restrain the Narragansett Company from carrying out this threat.

This suit was heard by Judge Brown, who rendered an opinion (which is made a part of the record in the present case, pp. 1-22) leaving open the question whether the Commission had power after a formal public hearing to establish a rate inconsistent with that specified in the contract, but holding that, in any view of the case, the mere filing of a new rate by the Narragansett Company and waiving of the statutory notice by the Commission was not enough to relieve the Narragansett Company from its obligations under the contract.

Attleboro Steam & Electric Co. v. Narragansett Electric Lighting Co., 295 Fed. Rep. 895.

On April 4, 1924, there was entered in accordance with this opinion a final decree enjoining the Narragansett Company as prayed in the bill with a proviso to the effect that nothing contained in the decree should be construed as affecting the rights of the parties in case the Commission should assume after notice and a formal public hearing to establish a rate inconsistent with that specified in the contract.

On May 7, 1924, the Narragansett Company filed with the Commission a schedule designated as R. I. P. U. C. 125, setting out a rate applicable to all service rendered by the Narragansett Company to the respondent, which rate is materially higher than that specified in the contract and is otherwise inconsistent with the contract and with the provisions of the schedule R. I. P. U. C. 68 (Record, p. 29). On the same day the Commission at the solicitation of the Narragansett Company (Record, p. 23) notified the respondent that on its own motion it ordered "an investigation and public hearing upon the question of whether the exist-

ing rates, tolls and charges of the Narragansett Electric Lighting Company now charged to the Attleboro Steam & Electric Company or those proposed to be charged to said company and other electric lighting companies under said rate schedule R. I. P. U. C. No. 125 cancelling R. I. P. U. C. No. 68 and No. 101 are unjust, unreasonable, insufficient or unjustly discriminatory or preferential or otherwise in violation of any of the provisions of the Public Utilities Act of the State of Rhode Island and otherwise upon the question as to the propriety of the proposed change or changes embodied in said Schedule No. 125," the hearing to be held on May 26, 1924. The reference in this notice to the rates charged to "other electric lighting companies under said rate schedule R. I. P. U. C. No. 125" was nugatory, because the respondent was avowedly the only customer affected by that schedule (Record, pp. 94, 96, 385). Upon the opening of the hearing, the respondent appeared by its attorneys and represented that the Commission had no jurisdiction to hold the proposed investigation or to establish the rate specified in the schedule R. I. P. U. C. 125 in substitution for that specified in the contract and in the schedule R. I. P. U. C. 68 or to make any order inconsistent with the terms of the contract for the reason, among others, that any action so taken would be repugnant to the Constitution of the United States (Record, pp. 51-54). The Commission overruled all these jurisdictional objections and assumed to proceed with the hearing substantially as if the service in question was strictly intrastate and as if the only question was what rate for service rendered the respondent would yield the Narragansett Company the profit to which it conceived itself to be entitled upon its business generally.

On January 21, 1925, the Commission filed an opinion which concluded as follows (Record, p. 420) :—

“It is therefore ORDERED :

“(1) That the rates contained in Schedule R. I. P. U. C. No. 68 of the Narragansett Electric Lighting Company, are unjust, unreasonable, insufficient and unjustly discriminatory and preferential and otherwise in violation of the Public Utilities Act, and

“(2) That the rates contained in Schedule R. I. P. U. C. No. 125 of the Narragansett Electric Lighting Company are just and reasonable, and may be allowed to become effective on all electricity delivered on and after February 1, 1925.”

The respondent, being uncertain as to whether under the terms of the Public Utilities Act it had a right to appeal from the order of the Commission, filed simultaneously in the Supreme Court of Rhode Island a claim of appeal and a petition for certiorari. The grounds of appeal (Record, pp. 422-426) may be summarized as follows :—

- (a) The Commission acted without jurisdiction;
- (b) There was no evidence to justify the setting aside of the contract rate and the establishing of the new rate;
- (c) The Public Utilities Act, if construed as purporting to give the Commission jurisdiction to make the order in question, is repugnant to the Constitution of the United States—

- (i) As improperly interfering with interstate commerce;
- (ii) As depriving the respondent of the equal protection of the laws;
- (iii) As depriving the respondent of its property without due process of law;

- (iv) As impairing the obligation of the contract between the respondent and the State of Rhode Island implied in the Commission's approval of the contract;
- (d) If the Public Utilities Act be so construed, the Commission's order is repugnant to the Constitution of the United States for similar reasons;
- (e) The order of the Commission, even if not invalid as matter of law, is plainly wrong as opposed to the great weight of the evidence.

The Supreme Court of Rhode Island, after deciding that the respondent's remedy was by appeal, proceeded, without considering the many other points argued, to deal with the basic question whether it was competent for the State to fix the rates to be charged for an interstate service like that called for by the contract and came to the conclusion that it was not (Record, pp. 438-477). A final decree reversing the order of the Commission and directing that the proceeding be dismissed was accordingly entered (Record, p. 448).

ARGUMENT.

The respondent submits that the decree of the Supreme Court of Rhode Island should be affirmed for the following reasons:—

I. The ruling upon the question of interstate commerce was right.

II. Wholly apart from the question of interstate commerce, the decree must be affirmed upon several grounds.

1. The order of the Public Utilities Commission was in other respects subject to fatal constitutional objections.

(a) If the Public Utilities Act applies to service rendered to customers in other States, it so discriminates against them as to deprive them of the equal protection of the laws.

(b) The respondent under the order in question is deprived of its property without due process of law.

(c) The contract between the respondent and the Narragansett Company cannot be set aside without impairing the obligation of the contract between the respondent and the State of Rhode Island implied in the Commission's approval of the contract rate for the full term of twenty years.

2. The Public Utilities Act according to its true construction gives the Commission no jurisdiction to make an order like that in question, even if the act would not be unconstitutional if so construed.

3. If the order of the Commission had not been open to jurisdictional objections, it must nevertheless have been reversed, because opposed to the great weight of the evidence.

I.

The Ruling of the State Court upon the Question of Interstate Commerce was right.

The petitioners concede that the transmission of electricity from one State to another constitutes interstate commerce. This being so, the only question is whether there is anything to take the case out of the general rule that rates for interstate service rendered by a public utility cannot be fixed by state action. The petitioners are, of course, obliged to recognize the close parallel between the facts of this case and those in *Missouri v. Kansas Natural Gas Co.*, 265 U. S. 298. In the attempt to distinguish that case they rely upon two classes of cases, neither of which, it is submitted, has any bearing upon the present situation.

One of these classes relates to state laws establishing in general terms police regulations applicable to interstate and intrastate commerce alike. It has often been held that, while Congress may legislate on these subjects because such legislation is incidental to the power to regulate interstate commerce and while a federal statute so enacted is supreme, state laws dealing with matters of this kind do not constitute regulations of interstate commerce and so are valid in the absence of action by Congress. The principle was stated as follows in a leading case involving a state statute prescribing the qualifications of locomotive engineers:—

“The provisions on the subject contained in the statute of Alabama under consideration are not regulations of interstate commerce. It is a misnomer to call them such. Considered in themselves they are parts of that body of the local law which . . . properly governs the relation

between carriers of passengers and merchandise and the public who employ them."

Smith v. Alabama, 124 U. S. 465 (at p. 480).

This doctrine is irrelevant to the case at bar, because it was recognized long before there was any federal legislation on the subject that a statute or order prescribing the rates to be charged for interstate service is primarily and necessarily a regulation of interstate commerce.

Wabash, St. Louis & Pacific Railway v. Illinois, 118 U. S. 557.

The other class of cases relied on by the petitioners deals with those few peculiar situations in which the business in question, although constituting interstate commerce, is so highly localized that it is regarded as consistent with the interstate commerce clause for the States to regulate such business in the absence of action by Congress.

Pennsylvania Gas Co. v. New York, 252 U. S. 23, cited by the petitioners, is a case of this kind. The dissimilarity between such a case and the present is patent; in it the product, after being brought into the State, was broken up and distributed at retail and it was this retail distribution which the State was held competent to regulate. In other words, the situation was the same as would arise if Massachusetts should undertake to fix the rates at which electricity should be supplied by the respondent to its miscellaneous customers in Attleboro; the fact that the electric current came from outside the State would not affect the power of Massachusetts to fix rates unless Congress had enacted inconsistent legislation.

Public Utilities Commission v. Landon, 249 U. S. 236,

also cited by the petitioners, is yet more irrelevant; the decision went on the ground that, in view of the manner in which the gas in question was distributed, the service must be regarded as wholly intrastate.

In the case at bar the service is not the distribution in one State of something produced in another State; the essence of the contract is the transmission of the product across the state line. The service is, moreover, strictly wholesale, the entire product being transmitted to a single recipient, which performs independently the local service of distribution. Under these circumstances, the Supreme Court of Rhode Island was clearly right in treating the following passage from the opinion in *Missouri v. Kansas Natural Gas Co.* (265 U. S. at p. 309) as controlling:—

“In both cases [*Public Utilities Commission v. London* and *Pennsylvania Gas Co. v. New York*] the things done were local and were after the business in its essentially national aspect had come to an end. The distinction which constitutes the basis of the present decision is clearly recognized in the *London Case*. The business of supplying, on demand, local consumers is a local business, even though the gas be brought from another State and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance. But here the sale of gas is in wholesale quantities, not to consumers, but to distributing companies for resale to consumers in numerous cities and communities in different States. The transportation, sale and delivery constitute an unbroken chain, fundamentally interstate from beginning to end, and of such continuity as to amount to an established course of business. The para-

mount interest is not local but national, admitting of and requiring uniformity of regulation. Such uniformity, even though it be the uniformity of governmental nonaction, may be highly necessary to preserve equality of opportunity and treatment among the various communities and States concerned."

The case of *Port Richmond & Bergen Point Ferry Co. v. Board of Chosen Freeholders*, 234 U. S. 317, is much stressed by the petitioners. With regard to that case it is to be noted in the first place that traffic over the ferry in question moved both ways and the decision turned largely on the fact that, if New Jersey were admitted to have the right to regulate the rate charged for transit from New Jersey to New York, there must be a corresponding right on the part of New York to regulate the rate charged in the other direction, so that neither State had any advantage over the other. If the transmission in the case at bar were sometimes one way and sometimes the other, as would be true of a telephone line, for example, the cases would be similar in this respect. As it is, however, the transmission is all in one direction, so that, if the petitioners are right, the result is that Rhode Island has the sole power to fix the rates to be paid by citizens of Massachusetts for an interstate service and this power, it should not be forgotten, is a legislative power which is not necessarily exerted through a commission acting quasi-judicially, but may be exercised by direct enactments based on considerations altogether foreign to the interests of the Massachusetts consumers. It is unnecessary, however, to enlarge upon these details, because it is apparent from the opinion in the *Port Richmond* case that the *ratio decidendi* was the fact that ferries, for historical reasons, must be deemed *sui generis* as regards the application of the interstate

commerce clause and that, even with respect to ferries, the exception to the general rule is very limited.

St. Clair County v. Interstate Transfer Co.,
192 U. S. 454.

The considerations which led the court to conclude that the Constitution was not intended to take away the power of the States to regulate ferries,—many of which were, of course, in existence long before the Constitution was adopted,—have no application to modern instruments of commerce like railroads and transmission lines. For example, a railroad may be imagined with only two stations, one in New York and one in New Jersey; can it be supposed that the States, even in the absence of federal legislation, would have any greater power to regulate the rates than as if there were three or four stations on either side of the line, in which case no one would dream that any power of regulation existed?

Corington & Cincinnati Bridge Co. v. Kentucky, 154 U. S. 204.

There is, in fact, no such rule as the petitioners seem to assert, *i.e.*, that, if the movement of interstate commerce is over a comparatively short course and between points near the state line, the right of the States to impose regulations is greater than when the movement is more extended and between points more remote. The recent decisions as to the right to regulate the interstate movement of automobiles sufficiently dispose of any such notion.

Buck v. Kuykendall, 267 U. S. 307.

George W. Bush & Sons Co. v. Maloy, 267
U. S. 317.

The petitioners further contend that, if Rhode Island cannot regulate the rates to be charged by the Narragansett Company for interstate service, the power to fix the rates charged to local consumers is to a certain extent restricted. That, of course, is true, but it is of no consequence, because the supposed difficulty is no different from that which always obtains when a public utility is rendering both intrastate and interstate service. The argument applies equally to railroad rates, for example, yet no one would pretend that it was of any force with regard to such rates.

Much of the petitioners' brief is devoted to enlarging upon the hardship which it is supposed may result to the Narragansett Company's Rhode Island customers if there is no tribunal competent to regulate the rates charged by it for interstate service. The answer to this argument, if one be needed, is found in the language used by the court in *Lemke v. Farmers' Grain Co.*, 258 U. S. 50 (at p. 60) :—

"It is alleged that such legislation is in the interest of the grain growers and essential to protect them from fraudulent purchases, and to secure payment to them of fair prices for the grain actually sold. This may be true, but Congress is amply authorized to pass measures to protect interstate commerce if legislation of that character is needed. The supposed inconveniences and wrongs are not to be redressed by sustaining the constitutionality of laws which clearly encroach upon the field of interstate commerce placed by the Constitution under federal control."

The passage which the petitioners on page 25 of their brief quote in this connection from Judge Brown's opinion (295 Fed. Rep. at p. 897) is of no significance, not only because it is a mere dictum, but because it antedates the decision in *Missouri v. Kansas*

Natural Gas Co.: the judge would doubtless have expressed himself differently if he had had that decision before him.

Another contention made by the petitioners is that the interstate service is only a small part of the service rendered by the Narragansett Company and that therefore the regulation of the interstate business should be deemed indirect and incidental. This argument is hardly consistent with the petitioners' other positions; if the interstate service is insignificant as compared with the whole service performed by the Narragansett Company, no hardship can result to Rhode Island consumers if the interstate business remains unregulated. Apart from this, however, the unsoundness of the contention is obvious. It is difficult to conceive of anything constituting a more direct regulation of interstate service than an order prescribing the rate at which it shall be performed. This is forcefully pointed out by the Supreme Court of Rhode Island in the case at bar (Record, pp. 446-447) :—

"The intrastate and interstate business of the Narragansett Company can be segregated. This separation has actually been made by that company and the Commission in establishing a basis for the proposed new rate. The effect of the action of the Commission was direct on interstate commerce and incidental on local and state commerce. Such being the case there is no difference in principle because of the amount of interstate commerce involved, whether it is much or little, at wholesale or retail. The purpose of the state action is immaterial if the result is to impose a direct burden on interstate commerce."

The petitioners' contention may be tested by applying it to the case of a railroad whose main line is

wholly within one State but which has a branch line extending into another State. It will hardly be pretended that the right of the former State to regulate the rates to be charged on this branch line is affected by the fact that it happens to be a part of a system largely intrastate.

It is to be remembered in this connection, moreover, that the order now in question is not like a speed law, for example, which applies to all classes of traffic alike, but is avowedly aimed solely at the respondent and will not affect any other consumer (Record, pp. 94, 96, 385). Such an order stands no better than as if it were limited in terms to service rendered to the particular customer intended to be affected.

Guinn v. United States, 238 U. S. 347.

State v. Jones, 66 Ohio St. 453.

People v. Albertson, 55 N. Y. 50.

Hence it is unnecessary to consider what the rule would be if the respondent were only one of many customers affected by the order and if the others were all in Rhode Island.

The petitioners on page 30 of their brief say that "the rate here regulated was for the sale within the State of a commodity produced within the State, as distinguished from a rate for transportation." This statement is inaccurate in that the electric current is delivered at the state line, so that, in so far as the transaction embodies the elements of a sale, it is like a case in which a seller stands on one side of the state line and hands the article in question across to a buyer standing on the other side. That the seller's State, in

such a situation, cannot regulate the price at which the sale shall be made seems too plain for argument.

Leisy v. Hardin, 135 U. S. 100.

Lemke v. Farmers' Grain Co., 258 U. S. 50.

Shafer v. Farmers' Grain Co., 268 U. S. 189.

In *Missouri v. Kansas Natural Gas Co.*, the court said (265 U. S. at p. 308) :—

“The sale and delivery here is an inseparable part of a transaction in interstate commerce—not local but essentially national in character,—and enforcement of a selling price in such a transaction places a direct burden upon such commerce inconsistent with that freedom of interstate trade which it was the purpose of the commerce clause to secure and preserve. It is as though the Commission stood at the state line and imposed its regulation upon the final step in the process at the moment the interstate commodity entered the State and before it had become part of the general mass of property therein.”

Again, in *People's Natural Gas Co. v. Public Service Commission*, [1925-6] U. S. Adv. Ops. 468, it appeared that natural gas produced in West Virginia was delivered at the Pennsylvania line through a registering meter to a Pennsylvania corporation and by it transmitted to consumers in the latter State. The court said (at p. 469) :—

“As respects the West Virginia gas we are of opinion, in view of its continuous transportation from the places of production in one state to those of consumption in the other and its prompt delivery to purchasers when it reaches the intended destinations, that it must be held to be in interstate commerce throughout these transactions. Prior decisions leave no room for discussion on this point and show that the passing of custody and

title at the state boundary without arresting the movement to the destinations intended are minor details which do not affect the essential nature of the business."

The petitioners would, however, be in no better position if the current were delivered in Rhode Island. In *Dahne-Walker Co. v. Bondurant*, 257 U. S. 282, the court said (at p. 291) :—

"In no case has the court made any distinction between buying and selling or between buying for transportation to another State and transporting for sale in another State. Quite to the contrary, the import of the decisions has been that if the transportation was incidental to buying or selling it was not material whether it came first or last."

The fact that the current is generated in Rhode Island is likewise immaterial. When the commodity is a natural product and the sale of it may deplete the natural resources of the State, the argument in favor of the right to regulate such sale is exceedingly plausible. This court, however, has refused to recognize any such right even in cases of that kind.

West v. Kansas Natural Gas Co., 221
U. S. 229.

United Fuel Gas Company v. Hallanan, 257
U. S. 277.

Pennsylvania v. West Virginia, 262 U. S.
553.

In the case last cited the court said (at p. 596) :—

"Natural gas is a lawful article of commerce and its transmission from one State to another for sale and consumption in the latter is interstate commerce. A state law, whether of the State where the gas is produced or that where it is to be sold, which by its necessary operation prevents, obstructs or burdens such transmission is

a regulation of interstate commerce,—a prohibited interference.”

Similarly, in *Dahke-Walker Co. v. Bondurant*, 257 U. S. 282, and *Lemke v. Farmers' Grain Co.*, 258 U. S. 50, the fact that the wheat in question was grown in the State which attempted to regulate the sale was treated as irrelevant.

A final point urged by the respondents is that the Narragansett Company is operating under franchises granted by the State whose power to regulate its rates is in question, relying on the concluding words of the opinion in *Missouri v. Kansas Natural Gas Co.* (265 U. S. at p. 310) :—

“That some or all of the distributing companies are operating under state or municipal franchises cannot affect the question. It is enough to say that the Supply Company is not so operating and is not made a party to these franchises by merely doing business with the franchise holders.”

The short answer to this argument is that the record discloses nothing as to the character of the franchises under which the Narragansett Company is rendering the service in question beyond the bare fact that its right to maintain wires in the highways, etc., has presumably been granted by the State or by some municipality. This alone is plainly immaterial. Almost every public utility operates under state or municipal franchises and if this mere fact, regardless of the terms of the franchises, gave the State the power to regulate interstate service, there would be very few cases in which the existence of such power could be denied.

The statute of 1917, quoted in the petitioners’

brief, was not brought to the attention of the court below and is, in any event, immaterial. There is no evidence that the Narragansett Company has exercised the rights conferred by this statute. It seems obvious, moreover, that the fact that a corporation enjoys the right of eminent domain does not subject its interstate business to state regulation; if this were otherwise, the States could fix railroad rates *ad libitum*.

Similar considerations apply to the statute of 1918, which is also quoted by the petitioners; the interstate commerce clause is surely not overridden by a mere grant of authority to absorb other companies,—an authority, which, so far as appears, has never been acted upon.

The recent decision of the Court of Appeals of the District of Columbia in *Galloway v. Bell*, 11 Fed. Rep. (2d) 558, is significant,—especially as a petition for certiorari was denied ([1925-6] U. S. Adv. Ops. 547),—inasmuch as the court placed upon the opinion in *Missouri v. Kansas Natural Gas Co.* the same interpretation as was given it by the Supreme Court of Rhode Island. The question was very similar to that now involved, *i.e.*, as to the power of the Public Utilities Commission of the District of Columbia to regulate the price of gas produced within the District and delivered at the district line to a Maryland corporation for distribution in that State. The court, having first pointed out that the jurisdiction of the district commission was subject to the same restrictions as that of the various state commissions with respect to interstate commerce, quoted at length from the opinion in *Missouri v. Kansas Natural Gas Co.*, and then said (at p. 561) :—

“It thus appears that not only is the district commission powerless to fix the price at which gas shall

be delivered by the Washington Company to the Maryland Company, but the Maryland commission is likewise without power or authority to act in the premises. Neither of the commissions, nor any authority within the District or the State of Maryland, can regulate this matter, since such regulation would amount to the placing of a burden upon interstate commerce. Its regulation at that point lies alone with Congress, and Congress thus far has failed to act."

It is suggested by the petitioners that this passage was in the nature of a dictum and that the real ground of the decision was that no order purporting to fix the rate for the service in question had in fact been made. It is apparent from the opinion, however, that this is a misconception. The court did, indeed, intimate that the action in question did not have the effect of an order but expressly stated (at p. 560) that this point was immaterial, because such an order, if entered, would be void for want of jurisdiction:—

"Underlying and decisive of the propositions advanced by plaintiffs in this case is the fundamental question of jurisdiction. It is of little importance whether the district commission did or did not fix the price at which the Washington Company shall deliver gas to the Maryland Company at the district line. While we are clearly of the opinion that the commission has not assumed this power, nevertheless it would have done a vain thing if it had attempted it, since the transmission of gas by pipe line from one State to another, or from the District of Columbia to a State, is interstate commerce, and it is beyond the power of a State to impose any burden upon such commerce."

It is said that, if the decision had not rested on the absence of any order, the court would have granted an injunction instead of dismissing the bill. The answer to this is that the case was heard on a motion to

dismiss and that the bill contained nothing to show that the Commission was proposing to take any action for the purpose of enforcing its alleged order; from the court's conclusion that the order, if made, was void on its face, it followed that the plaintiffs were not aggrieved, so that no decree other than one of dismissal could have been entered.

II.

Wholly apart from the Question of Interstate Commerce, the Decree must be affirmed.

1. THE ORDER OF THE PUBLIC UTILITIES COMMISSION WAS IN OTHER RESPECTS SUBJECT TO FATAL CONSTITUTIONAL OBJECTIONS.

If upon any view of the case the decree entered by the Supreme Court of Rhode Island was right, it must be affirmed regardless of the reason given for it.

Sullivan v. Iron Silver Mining Co., 143 U. S. 431.

Wisner v. Brown, 122 U. S. 214.

Even if it be assumed for the sake of argument, therefore, that the ruling of the state court upon the question of interstate commerce was wrong, the petitioners are not aggrieved if the order of the Public Utilities Commission was erroneous in some other respect and so should have been reversed in any event.

(a) *If the Public Utilities Act applies to Service rendered to Customers in other States, it so discriminates against them as to deprive them of the equal Protection of the Laws.*

While the order of the Public Utilities Commission proceeds on the assumption that the respondent is subject to all the burdens of the statute, it is apparent

that, being a foreign corporation with no place of business in Rhode Island, the respondent enjoys none of its benefits. Section 18 of the Public Utilities Act gives the right to invoke the power of the Commission only to "any city or town council, any corporation or any twenty-five qualified voters." It is obvious that "any city or town council" includes only municipal agencies in Rhode Island and that, in like manner "qualified voters" means "voters qualified in Rhode Island." Theoretically, of course, the word "corporation" is broad enough to include a corporation organized and doing business anywhere, but the necessary inference from the context is that only corporations doing business in Rhode Island are intended.

Commonwealth v. Boston, 97 Mass. 555.

The petitioners apparently conceive that, if the word "corporation" is not restrained to Rhode Island corporations, it necessarily includes the respondent. This, however, is a *non sequitur*. It may be that a corporation which is localized in Rhode Island to the extent of having a regular place of business there is included, but it is not possible that the legislature should have meant to include corporations which are not only organized in other States but have no places of business in Rhode Island, while expressly excluding nonresident individuals from the benefits of the act.

It follows that, if the act is construed as applicable to service rendered to customers in other States, it subjects such customers to its burdens but gives only residents of Rhode Island its benefits; nonresidents, therefore, are deprived of the equal protection of the laws, so that, as applied to them, the act is repugnant to the Fourteenth Amendment.

Kentucky Finance Corporation v. Paramount Auto Exchange Corporation,
262 U. S. 544.

Travis v. Yale & Towne Manuf. Co., 252
U. S. 60.

Southern Railway v. Greene, 216 U. S. 400.

It is, of course, true that an act of this kind need not give each individual customer the right to set the administrative machinery in motion and may require that some number which may fairly be regarded as representative unite in a complaint, but this does not bear out the petitioner's contention that an act which expressly limits the right to particular classes of customers can be sustained. In each of the various statutes collected in Appendix C of the petitioners' brief, the right to institute complaints as to rates is given to a certain number of "persons," "corporations," "patrons" or "customers" without regard to their status in other respects. The provision in § 24 of the Massachusetts statute (quoted on p. 98 of the petitioners' brief) as to complaints by "twenty legal voters of a city or town within which any railroad or railway is located" looks, not to the fixing of rates, but merely to an examination of "the condition and operation of such railroad or railway,"—matters of peculiarly local concern.

(b) *The Respondent under the Order in Question is deprived of its Property without due Process of Law.*

The petitioners argue that the State may in the exercise of the police power set aside contracts between public utilities and individual customers when the public good demands. This doctrine is, of course, well es-

tablished, but it is subject to the important qualification that the overriding of contracts solemnly entered into is an extreme measure and that the mere fact that a contract turns out to be unprofitable to those furnishing the service is not a sufficient reason for setting it aside, especially when no customer is making complaint and when, as here, the absence of profit was foreseen at the time the contract was made (Record, pp. 136-137, 146-147, 255). In order to justify the impairing of the obligation of such a contract, it must be shown that, if the contract remains in force, the effect will be not simply to reduce the company's profits, but to prevent it from rendering adequate service to its other customers. The principle was stated as follows in *Arkansas Natural Gas Co. v. Arkansas Railroad Commission*, 261 U. S. 379 (at p. 383):—

“The power to fix rates, when exerted, is for the public welfare, to which private contracts must yield; but it is not an independent legislative function to vary or set aside such contracts, however unwise and unprofitable they may be. Indeed, the exertion of legislative power solely to that end is precluded by the contract-impairment clause of the Constitution. The power does not exist *per se*. It is the intervention of the public interest which justifies, and, at the same time, conditions, its exercise.”

This passage was quoted by Judge Brown as applicable to the present situation (295 Fed. Rep. at p. 901; Record, pp. 13-14). He further said:—

“The finding that the contract was unprofitable *and therefore discriminatory . . .* is a non-sequitur.”

“Before a contract can be interfered with under the police power, it must appear that the contract does in some manner affect adversely the welfare of the public.

"There is nothing in the records to show that the defendant brought to the notice of the Commission any evidence that the company would be unable to perform its full duty to the community whose interest it is the function of the Commission to protect."

It is suggested by the petitioners that from this part of Judge Brown's opinion it appears that the ground of his decision was "that there was no proper finding of facts after a hearing." If this means that, if the first attempt of the Commission to abrogate the contract had been based upon the same evidence as the second, Judge Brown would have held the action of the Commission justifiable, it is a misconception. What the judge ruled in substance was that there must be something more than the remote detriment to the public theoretically resulting from the existence of an unprofitable contract to warrant the abrogation of such a contract, whereas the evidence upon which the order of January 21, 1925, purported to be based presented no suggestion whatever of real detriment to the public.

It is perfectly true, as is asserted by the petitioners on p. 67 of their brief, that the exact point decided in *Arkansas Gas Company v. Railroad Commission*, supra, is not presented by the present controversy, but this does not affect the scope of the principle which the court treated as fundamental. So, in *Wichita Railroad & Light Co. v. Court of Industrial Relations*, 113 Kans. 217, the decision might conceivably have been arrived at on a narrower ground, but the court (at p. 229) made the following statement the basis of the whole discussion:—

"Before a contract can be interfered with through the police power, it must appear that the contract does

in some measure affect adversely the welfare of the public.

“If, for instance, continued performance of the contracts in question should bear so heavily on the power company that its general revenues would be depleted to the extent that recoupment would have to be made at the expense of the other customers, or would otherwise be reflected adversely in its rates or services, to that portion of the public served by the power company, the contracts could and should be abrogated under the police power; but if continued performance of the contracts would only affect the net profits or dividends on that portion of the power company’s property devoted to performance of the contracts, then the public interest would not be affected, and there would be no occasion or excuse for the intrusion of the state’s police power.”

So, in the *Rockingham County Light & Power Company’s Case*, 6 N. H. P. S. C. Rep. 154, the Commission said (at p. 156) :—

“The commission would not feel justified in nullifying a contract entered into in good faith by a utility with one of its patrons for service under existing rates for a term of years, where the continuance of service under the contract did not in some way impair the service to the public or increase the rates to other customers. If furnishing the service under the contract simply means a reduction of dividends, the stockholders must stand the loss.”

The petitioners on p. 66 of their brief refer to the opinion rendered by the majority of the Circuit Court of Appeals in *Public Utilities Commission v. Wichita Railroad & Light Co.*, 268 Fed. Rep. 37. It is said that, while the decision of the Circuit Court of Appeals was reversed by this court (260 U. S. 48), the views expressed by the Circuit Court of Appeals on this point

were not disapproved. The reason for this, however, is obvious; since this court held that the order of the Public Utilities Commission of Kansas purporting to set aside a contract rate was void for want of jurisdiction, discussion of a point which would arise only in case jurisdiction existed would have been out of order. In view of the decision subsequently rendered by the Supreme Court of Kansas in *Wichita Railroad & Light Co. v. Court of Industrial Relations*, supra, under the same statute it is apparent that, if the question should come before the Circuit Court of Appeals again, the decision would be in accordance with the dissenting opinion of Sanborn, J., the material part of which is as follows (268 Fed. Rep. at p. 45) :—

“Under the police power of the State and the statutes of Kansas the Commission has the jurisdiction and the authority to raise the rates for the service of public utility corporations prescribed by lawful contracts between it and others, in cases where the agreed rates are confiscatory, unduly discriminatory, and in cases where the good order, health, comfort, or public welfare requires such action; but in my opinion the jurisdiction of the Commission in this direction extends no further. For example, it does not extend to the changing of contract rates of public utilities with private parties not demanded by the public welfare, because one of the parties to one of these contracts was induced to agree to it by mistake, or by accident, or by the fraud or the deceit of the other party to it. It is no ground, either at law or in equity, either in the courts or elsewhere, for the modification or abrogation of a contract for electric energy or for other public utilities for a long term of years, that the contract turns out to be more profitable during some of the years of the term, or more burdensome during other years of the term, to one or the other of the parties, than that party anticipated at the time it signed the agreement that it would be.”

Reliance is also placed by the petitioners upon the line of cases represented by *Interstate Commerce Commission v. Union Pacific Railroad*, 222 U. S. 541, which decide that an order fixing a rate *prima facie* confiscatory cannot be sustained merely on the ground that the earnings of the utility as a whole are adequate. This doctrine is doubtless sound; but it is equally well established that, in determining the reasonableness of a particular rate, the service rendered by the utility in question must be considered as a whole and cannot be treated as constituting, as it were, a series of water-tight compartments; hence the fact that a particular part of the service does not yield the return which may fairly be expected from the property as a whole does not conclusively show that the rate fixed for that service is confiscatory.

Groesbeck v. Duluth, South Shore & Atlantic Railway, 250 U. S. 607.

New York v. Public Service Commission, 269 U. S. 244.

In the case last cited an order requiring the extension of gas mains into what might be unremunerative territory was sustained because, as the court said at p. 249, "there is nothing to show . . . that compliance with the order will necessarily so reduce the company's income as a whole as to be in effect a confiscation of its property."

The petitioners lay stress on the finding of the Commission "that a continuance of service to the Attleboro Company under said schedule No. 68 will be detrimental to the general public welfare, and will prevent the Narragansett Company from performing its full duty towards its other customers" (Record, p. 404). The short answer to this argument is that there is not

a scintilla of evidence to support the finding. Detriment to the Narragansett Company's other customers and to the public generally can, it is manifest, arise only in two ways; either the enjoyment of the contract rate by the respondent may cause other customers to receive less favorable rates than they are entitled to or the Narragansett Company's earnings may be so reduced as to impair its ability to secure the capital needed in order to provide adequate service. There is not the slightest suggestion either in the findings of the Commission or in the evidence that either of these conditions obtains. It is not pretended that the Narragansett Company's rates to other customers are not eminently reasonable (Record, p. 101) or that the service rendered them is in any way inadequate (Record, p. 101); as to its financial condition, it appears that its gross earnings have increased from \$2,566,000 in 1917 to \$6,600,000 in 1923, that for the year 1923 it had a net divisible income of \$1,595,848.94, and that, after paying dividends at the rate of 8 per cent., the surplus for the year was \$293,392.94; also that for the first three months of 1924, after making provision for dividends at the same rate and notwithstanding a reduction in the charges for certain classes of service, there were surplus earnings of \$248,969.02 (Record, pp. 102-103, 123). Throughout the entire period since the making of the contract, the Narragansett Company has paid 8 per cent. dividends; its stock now sells substantially on a 6 per cent. basis (Record, p. 176). The difference between the Narragansett Company's income from service rendered the respondent under the contract rate and that under the rate fixed by the Commission is estimated at \$50,000 per year, of which amount \$38,531.87 represents a return of 8 per cent. on the supposed value of the property used in the

performance of the contract (Record, pp. 86, 87) ; this is so small a proportion of the company's total income as to make preposterous the suggestion that the company's ability to serve its Rhode Island customers will be perceptibly affected if the contract is not set aside.

Should an additional sum of \$50,000 per year be collected from the respondent and applied to a reduction of the rates charged the other customers,—there being approximately 50,000 customers (Record, p. 99),—the average annual saving to them would be just one dollar apiece! Had there been any reason for reducing their rates to this extent, the Narragansett Company would hardly have crippled itself if it had applied a part of its annual surplus to that purpose.

At the hearing before the Commission there were introduced certain tabulations purporting to show that a loss has resulted each year under the contract and that this loss will increase during the remainder of the contract period. It is not alleged, however, that the loss will endanger the Narragansett Company's dividend rate or substantially impair its net profits (Record, p. 102). Besides this, the question is as to whether the contract may properly be abrogated *now*; whatever the rights of the parties might be if the contract should hereafter become more onerous, it certainly cannot be set aside at this time because of conjectural difficulties in the future.

An essential vice in the Commission's rulings and in the contentions of the petitioners is the idea that the purpose of a public utility act like that now under consideration is to assure to the owners of a utility a satisfactory return on their investment. This, however, is not the primary object of such an act; the aim is to secure for the patrons of a utility adequate serv-

ice at reasonable rates, so that action which looks to an increase of the profits yielded by the utility is never justifiable except as a means of securing the primary end. This point is developed at length in a recent English case.

Southport Corporation v. Birkdale District Electric Supply Co., [1925] Ch. 794; affirmed [1926] A. C. 355.

In dealing with the contention that a contract by an electric lighting company (operating under a so-called "Electric Lighting Order," equivalent to what in the United States is commonly spoken of as a "franchise") not to charge higher rates than those charged by the municipality supplying an adjoining area was *ultra vires* because of the possibility that it might, by causing loss to the company, impair the company's ability to serve its customers, Sargant, L. J., said ([1925] Ch. at p. 824) :—

"It is here said that by agreeing that they will charge no more than will be charged by an adjoining area, which might be and which I think may be shown to be a slightly better field for electrical enterprise than the field in the present case, they have entered into what may be an improvident bargain, which might result in so great a loss of profit or indeed in such an absolute loss as to result in the winding up of the undertaking and an inability to carry it on in the future. There is no evidence at all to that effect, and indeed there seems to have been a very substantial profit earned throughout by the company, indeed such a profit that a substantial margin would be left now if the company were fulfilling the bargain which they entered into. However that may be, if a loss were incurred that would be the result of a miscalculation by the commercial advisers of the company, and the company would be in no worse position than if they had made

an improvident bargain with regard to the price at which they might buy their coal or with regard to any other contract of real importance. All that is one of the risks which has to be run by a concern carried on for the purpose of profit. In my judgment it would be an extraordinary extension of this doctrine of ultra vires or repugnancy to say that in such a case as this a commercial undertaking was deprived of its ordinary discretion as to fixing the price at which the services rendered or the commodities supplied should be rendered or supplied."

In the House of Lords Lord Birkenhead referred with approval to the opinion of Sargant, L.J., and Lord Sumner said ([1926] A. C. at p. 373):—

"The argument must be either that it is one of the direct statutory objects of the Electric Lighting Order that the undertakers should make a profit or at least not suffer any loss, or else that this is an indirect statutory object, since, if the undertakers make no profit, they will either pursue the undertaking without zeal or will drop it, so soon as this imaginary rate-war exhausts their resources.

"My Lords, I am afraid this is beyond me. It may be the policy of the Electric Lighting Acts to get trading companies to take up and work Electric Lighting Orders in hope of gain, but I cannot see that it is any part of the direct purposes of the Order that money should be made or dividends distributed. The primary object of the Electric Lighting Order was to get a supply of electric energy for the area in question, a thing only feasible at the time by getting a trading company to undertake the business. It was not to secure that certain charges should be made or that certain results should be shown upon a profit and loss account."

In *Colorado v. United States*, [1925-6] U. S. Adv. Ops. 520, this court (at p. 522) has expressed similar views as to the considerations governing an applica-

tion to the Interstate Commerce Commission under the Transportation Act of 1920 for authority to abandon a railroad:—

“The argument [*i.e.*, that the Interstate Commerce Commission has no jurisdiction to authorize the abandonment of an intrastate branch of an interstate railroad system] rests upon a misconception of the nature of the power exercised by the Commission in authorizing abandonment under paragraphs 18-20. The certificate issues not primarily to protect the railroad, but to protect interstate commerce from undue burdens or discriminations. The Commission by its order removes an obstruction which would otherwise prevent the railroad from performing its Federal duty.”

The order of the Commission has the effect of depriving the respondent of its property without due process of law for the further reason that, even if there had been evidence justifying the setting aside of the contract, the Commission was not on any theory warranted in going further by way of increasing the rate than was absolutely necessary to relieve the supposed exigency. The present case, in other words, involves in reverse form the principle that rates duly established by the State cannot be pronounced too low simply because they yield a less profit than may seem fair from the standpoint of the utility or expedient from that of the public; they must be actually confiscatory before they can be interfered with.

Detroit & Mackinac Railway v. Railroad Commission, 203 Fed. Rep. 864; affirmed 235 U. S. 402.

So here, the rate cannot be fixed as if the contract did not exist and as if the only question was what rate would yield what is supposed to be a normal profit; a

rate fixed by a valid contract can be raised only to such extent as is absolutely demanded by the public necessity, even though the rate as so raised may be less than might be deemed reasonable on general principles. The Commission, however, made no finding on this vital point. The contention of the Narragansett Company was that it was entitled to a profit of 8 per cent. on its business generally and that the rate for service rendered to the respondent should be so raised that the return on the investment devoted to the furnishing of this service would reach that figure (Record, pp. 57, 229). It was virtually conceded that only about \$23,700 of additional income was needed annually to offset the increase in generating cost since the contract was made, yet a rate calculated to bring in each year at least \$50,000 more than the old rate was asked for (see analysis on p. 42 of this brief). The Commission in substance adopted this contention, as appears from the following passage in its decision (Record, p. 419) :—

“The Commission find that under present conditions a return of approximately 8% on the value of the investment devoted to the furnishing of service to the Attleboro Company is a reasonable return and that considering all the evidence submitted, service by the Narragansett Company under schedule R. I. P. U. C. No. 125 will yield to the Narragansett Company approximately 8% on the investment devoted by the Narragansett Company to the furnishing of such service.”

The Commission, in other words, went about the fixing of the rate exactly as if the contract did not exist. It follows that, even if there had been justification for setting the contract aside, the rate actually fixed would still subject the respondent to an unwarrantable bur-

den and deprive it of its property without due process of law.

(c) *The Contract between the Respondent and the Narragansett Company cannot be set aside without impairing the Obligation of the Contract between the Respondent and the State of Rhode Island implied in the Approval of the original Rate.*

The respondent does not, of course, contend that, if the order of the Commission were valid in other respects, it could be attacked as impairing the obligation of the contract between the respondent and the Narragansett Company. The contract as to which this constitutional provision is invoked is the contract between the respondent and the State of Rhode Island implied in the Commission's approval of the contract and the rule of law relied on is the elementary one that a contract entered into by a State with respect to the rates to be charged by a public utility is no less binding than other contracts. Unless the right to fix different rates is expressly or impliedly reserved, the State cannot, without impairing the obligation of the contract, establish inconsistent schedules.

St. Cloud Public Service Co. v. St. Cloud,
265 U. S. 352.

Southern Iowa Electric Company v. Chariton, 255 U. S. 539.

Cleveland v. Cleveland City Railway, 194
U. S. 517.

Detroit v. Detroit Citizens' Street Railway,
184 U. S. 368.

In the present case, the 20-year term was as much an essential part of the rate embodied in the Schedule

R. I. P. U. C. 68 as the price to be charged. The schedule expressly recited "Term of contract twenty (20) years and thereafter unless discontinued by either party" (Record, p. 276). The approval of the contract rate by the Commission,—assuming that the Commission had jurisdiction in the matter at all,—necessarily imported a finding that it was consistent with the public interest that the Narragansett Company be permitted to take upon itself the obvious risk that, as a result of unforeseen conditions, the rate might prove unremunerative. Hence the State, by the approval of the rate, bound itself not to take inconsistent action during the twenty-year period. It is not competent for the State, under color of exercising the police power, to reverse the finding made by its officers when the rate was first submitted and in effect to say that they made a mistake, so that their adjudication may now be treated as nugatory, especially after this adjudication has been acted upon and the position of the respondent radically changed in reliance upon it; the State must be deemed to have entered into a contract not to disturb the rate for the period specified.

New York & Queens Gas Co. v. Prendergast,
1 Fed. Rep. (2d), 351.

Consolidated Gas Co. v. Prendergast, 6 Fed.
Rep. (2d), 243, 280.

State v. Marshall, 98 Ohio St. 467.

Section 33 of the Public Utilities Act, cited by the petitioners, does not affect the situation; whatever may be the scope of such a provision, it cannot in any event be construed as giving power to reopen a question which has in effect become *res judicata*.

Nicholson v. Piper, [1907] A. C. 215.

2. THE PUBLIC UTILITIES ACT, ACCORDING TO ITS TRUE CONSTRUCTION, GIVES THE COMMISSION NO JURISDICTION TO MAKE AN ORDER LIKE THAT IN QUESTION, EVEN IF THE ACT WOULD NOT BE UNCONSTITUTIONAL IF SO CONSTRUED.

The petitioners assert that the Supreme Court of Rhode Island impliedly decided that the Public Utilities Act gave the Commission jurisdiction to make the order in question, except as prevented by the commerce clause. The opinion, however, does not warrant this contention; it is apparent that, being satisfied that upon the fundamental ground the respondent was entitled to succeed in any event, the court deemed discussion of the various preliminary objections superfluous. Had it become material to determine whether, as a matter of statutory construction, the order was within the Commission's jurisdiction, the order must have been reversed on that ground.

Section 2 of the act purports to extend the power of the Commission to the regulation of every corporation, etc., owning or operating "any railroad or street railway within this state" and to every corporation, etc., owning or operating "any plant . . . within this state . . . for the production . . . of gas, electricity," etc. There is nothing in the act, as the petitioners suggest, expressly to limit the jurisdiction of the Commission to conveyance by common carriers wholly within the State. It is apparent, however, that, in order to escape fatal constitutional difficulties, the broad language as to railroads and street railways must be taken with the implied qualification that interstate service is not within the purview of the act. Even assuming that the clause as to gas, electricity, etc., would not necessarily be so construed if it stood alone, the significant fact is that this clause appears

as a part of the same sentence as the clause respecting railroads and street railways and is substantially identical in frame. When the legislature used in the clause as to railroads and street railways language having a well-defined meaning as applied to those subjects and immediately thereafter in the same sentence used similar language with respect to gas and electricity, the presumption is that the words were used in the same sense in the later clause as in the earlier.

Gillen's Case, 215 Mass. 96, 98.

As has been pointed out above, moreover, the right to invoke the power of the Commission is limited by § 18 of the act to residents of Rhode Island. Even if this discrimination between residents and nonresidents did not affect the constitutionality of the act, there would still be a presumption that the legislature did not intend to regulate transactions with nonresidents. Very explicit language would be necessary to warrant the conclusion that such an unfair discrimination was intended, even if constitutionally permissible. On the other hand, it is not difficult to infer that the legislature, perceiving the complications which would at once be encountered if it were attempted to regulate interstate transactions, preferred to leave such transactions outside the scope of the act.

3. IF THE ORDER OF THE COMMISSION HAD NOT BEEN OPEN TO JURISDICTIONAL OBJECTIONS, IT MUST NEVERTHELESS HAVE BEEN REVERSED, BECAUSE OPPOSED TO THE GREAT WEIGHT OF THE EVIDENCE.

Under §§34, 36 and 37 of the Public Utilities Act the respondent is entitled to have the Commission's find-

ings of fact reviewed substantially as upon an appeal in equity.

Ohio Valley Water Co v. Ben Aron Borough,
253 U. S. 287.

Oregon Railroad & Navigation Co. v. Fairchild, 224 U. S. 510.

The petitioners suggest that this right of review on the facts is limited to so much of the case as relates to the constitutional points. Even if this were true, it would still be necessary for the court to form an independent judgment upon substantially all the questions of fact, since it would, on any theory, be a violation of the respondent's constitutional rights to set the contract aside except in so far as the public interest may require and since the issue whether there is any such necessity is sharply contested. The petitioners, however, fail to appreciate that the question is not as to what provisions for review it was necessary to insert in the act in order to save it from unconstitutionality, but as to the extent of the appeal actually granted. The provisions of the Public Utilities Act as to appeals from orders of the Commission (§§34, 36, 37), are almost identical in language with the corresponding provisions of the General Laws of Rhode Island, 1923, c. 339, §§25, 27, 30, 32 (printed in the appendix to this brief) as to appeals from decrees of the Superior Court in equity. This makes it clear that, whatever the rule may be under other statutes, an appeal under the Public Utilities Act of Rhode Island brings up all questions of fact pertinent to the reasons of appeal.

The Baltimore, 8 Wall. 377.

Rivelli v. Providence Gas Co., 44 R. I. 76.

Even if all the jurisdictional difficulties were out of

the way, therefore it would not follow that the petitioners were entitled to have the decree of the state court reversed. This court, it is assumed, would not attempt to decide questions turning upon conflicting evidence, but, if the decision of such questions became needful, would remand the case to the state court for that purpose. It is apprehended, however, that the case will not be sent back for a rehearing which would inevitably lead to a new decree setting aside the order of the Commission. In other words, the petitioners cannot ask this court to disturb the decree of the state court, if it appears that a like decree must have been entered, even though the state court had overruled all the jurisdictional objections and had gone into the evidence at large. A brief consideration of facts which are conceded by the petitioners or established by undisputed evidence will, it is believed, demonstrate that this is the situation.

The Narragansett Company admits and the Commission finds that the rate named in Schedule R. I. P. U. C. 125 is aimed solely at the Attleboro Company and that no other consumer will be affected by it (Record, pp. 94, 96, 385). The purpose of the Narragansett Company is to obtain from the respondent some \$50,000 a year additional income, whereas Mr. Gray, the company's rate expert, conceded that, if the unit cost of the generating plant had remained at \$45, the company would not have complained of the contract rate (Record, p. 148). The Narragansett Company alleged that, since the contract was entered into, the unit cost of the generating plant had increased from \$45 to \$89.15 and the Commission found that this increase was the principal reason for the results of which the Narragansett Company complained (Record, p. 403). The proposed rate includes an annual

investment charge per kilowatt of demand of \$12.37 on account of generating cost (Record, pp. 226, 231). This is on the basis of the average unit cost of \$89.15 (Record, p. 226). If the average unit cost had remained at \$45, the allowance on account of generating cost in the annual investment charge would have been practically one-half of \$12.37—say \$6.20. The effect of this increase in the average unit cost upon the annual cost of performing the contract is arrived at by multiplying the increase in the charge per kilowatt of demand by the amount of the respondent's peak load, which is 3,840 kilowatts (Record, p. 229). The result is that, on the Narragansett Company's own figures, only about \$23,700 is needed to offset the increase in the unit cost of the generating plant, yet the rate established by the Commission is calculated to yield annually at least \$50,000 more than the contract rate.

The Narragansett Company, moreover, concedes that the contract was not expected to produce during the first ten years of its operation a normal rate of profit (Record, pp. 137, 146-147, 167, 255) and it is only by an unfair method of figuring that the contract can be shown to have resulted in an actual loss to the Narragansett Company or to have done more than merely reduce somewhat the profit on that part of the plant devoted to performing it. The Narragansett Company's method of figuring is open to criticism in the following respects, among others:—

1. It apportions "generating plant costs" among its customers according to the maximum primary demand. Although a great deal of secondary current is disposed of at a profit (Record, p. 78), this is totally disregarded. The result is very unfair to a customer which, like the respondent, takes only primary current.

Thus in 1923 the respondent, taking about $1/35$ of the total output of the Narragansett Company (Record, p. 87), is chargeable, according to the Narragansett Company's new method of figuring, with 3600/55000 or about $1/15$ of the capital cost; while the New England Power Company, which takes one-half of the total output (Record, p. 90),—seventeen and a half times as much current as the respondent,—is charged with only a little over four times as much of the generating plant capital cost.

2. The peak primary load of the Narragansett Company is taken at too low a figure (Record, pp. 90, 132, 158, 301, 318; see also argument for respondent before Commission, Record, pp. 201-203).

3. The contract required the Narragansett Company to build the necessary transmission line, the part of the same in Massachusetts to be the property of the respondent and the Seekonk Electric Company (a subsidiary of the Narragansett Company which was to own the line between the Rhode Island-Massachusetts boundary and the city limits of Attleboro) and the cost, not exceeding \$4,500 per mile in any event, to be repaid by these companies to the Narragansett Company (Record, pp. 258-259). The actual cost was considerably more than \$4,500 per mile. In its computations the Narragansett Company has assumed as the cost of that part of the transmission line which is situated in Rhode Island the cost of the entire line, less the sums paid by the Attleboro and Seekonk Companies (Record, pp. 161-162). This attempt to recoup the loss incurred in building the transmission line in Massachusetts is unwarranted.

4. In apportioning the overhead (Record, p. 237), no consideration is given to the fact that the respondent is a single wholesale customer (Record, p. 85).

5. Sundry interest charges are included which are unjustified (Record, pp. 159, 185-186).

If only a part of these errors are corrected, it becomes apparent that the Narragansett Company is not suffering an out-of-pocket loss from the contract but is merely failing to receive the full eight per cent. of profit on it (Record, pp. 87, 137-138).

It is apparent, therefore, that the Commission's order was unjustifiable. Even if it could be said that the evidence warranted a finding that *some* increase ought to be made, the rate actually fixed was so high as to be manifestly "unlawful" and "unreasonable" within the meaning of §34 of the Public Utilities Act. Hence the order must have been set aside, even if the jurisdictional points had been out of the case.

It follows that the decree of the Supreme Court of Rhode Island, from whatever angle it is viewed, was rightly entered and must be affirmed.

ROBERT G. DODGE.
HAROLD S. DAVIS.

APPENDIX

RHODE ISLAND LAWS OF MAY, 1884, PAGE 29,—
“AN ACT TO INCORPORATE THE NARRAGANSETT ELECTRIC LIGHTING COMPANY”

(Passed May 29, 1884.)

It is enacted by the General Assembly as follows:

SECTION 1. Isaac M. Potter, James G. Markland, Samuel W. Peckham, Henry C. Bradford, Frederick I. Marcy, Martin V. Brady, Nathaniel T. Spink and John B. Allen, their associates, successors and assigns, are hereby constituted a corporation by the name of “The Narragansett Electric Lighting Company,” for the purpose of prosecuting a general electric lighting, heating and power business; that is to say, the business of producing, using and supplying light, heat and power generated by means of electricity; and for the transacting of other business connected therewith; with all the powers and privileges, and subject to all the duties and liabilities set forth in chapters 152 and 155 of the Public Statutes, and in the statutes in amendment thereof, and in addition thereto.

SEC. 2. The capital stock of said corporation shall not exceed one hundred and fifty thousand dollars, to be fixed in amount from time to time, and to be divided into such number of shares, and the par value of each share to be fixed at such amount as the corporation may by vote determine; and said shares shall be non-assessable.

SEC. 3. The stock or shares of every stockholder shall be pledged and liable to the corporation for all debts and demands due and owing from such stockholder to the corporation, and whether overdue or due at a future day; and said stock or shares may be sold for the payment of such debts and demands in such manner as the by-laws of said corporation may prescribe; and in case the proceeds of such sale shall be insufficient to discharge such debts or demands, with the inci-

dental expenses of sale, the corporation may have their action against the debtor for the balance due.

SEC. 4. Said corporation, with the consent of the town and city councils where wires and conductors for electricity are to be put up, laid, used and maintained, may put up, lay, use and maintain wires and conductors for electricity, under and over highways, streets and sidewalks, and, with the written consent of the owners thereof, upon and over buildings, subject to such ordinances, regulations and orders of the city and town councils of the cities or towns where such wires or conductors shall be maintained, as are or may be enacted with respect to such wires and conductors; and said wires and conductors located above any highway shall be removed whenever required by general law or by order of such city or town council, after thirty days' notice in writing shall be given to said corporation; and said corporation shall be entitled to no compensation on account of such removal.

SEC. 5. There shall be an annual meeting of the stockholders, in the city of Providence, at such time as the by-laws shall prescribe, for the choice of officers, and for such other business as may come before them.

SEC. 6. Said corporation shall have an office or place of business in the city of Providence.

SEC. 7. This act shall take effect from and after its passage.

EXTRACTS FROM THE PUBLIC UTILITIES ACT OF
RHODE ISLAND (CHAPTER 795 OF THE PUBLIC
LAWS OF 1912, AS AMENDED BY CHAPTER 1651
OF THE PUBLIC LAWS OF 1918; NOW CONSTI-
TUTING CHAPTER 253 OF THE GENERAL LAWS
OF RHODE ISLAND, 1923).

SECTION 1. This act shall be known as the Public Utilities Act, and shall apply to the public utilities herein described and to the commission hereby created, and to the public utility corporations and persons herein mentioned and referred to.

SEC. 2. The term "commission," when used in this act, means the public utilities commission hereby created.

The term "commissioner," when used in this act, means one of the members of such commission.

The term "corporation," when used in this act, includes a corporation, company, association, and joint stock company or association.

The term "person," when used in this act, includes an individual, corporation, and a firm or copartnership.

The term "public utility," when used in this act, shall mean and embrace, and apply to every corporation, company, person, association of persons, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, lease, operate, manage or control any railroad or street railway within this state, or that now or hereafter may operate or do business as a common carrier within this state; and to every corporation, company, person, association of persons, their lessees, trustees or receivers, appointed by any court whatsoever, that now or hereafter may own, lease, operate, manage or control any plant or equipment, or any part of any plant or equipment, within this state for the conveyance of telegraph or telephone messages, or for the production, transmission, delivery, or furnishing of gas, electricity, water, light, heat or power, either directly or indirectly to or for the public: *Provided*, that this

act shall not be construed to apply to any public water works and water service owned and furnished by any city or town.

The term "common carrier," when used in this act, shall mean and apply to and embrace all railroad corporations, street railway corporations, express companies, freight companies, freight-line companies, dining-car companies, steamboat, power-boat and ferry companies, and all persons and associations of persons, whether incorporated or not, and their lessees, trustees and receivers, appointed by any court whatsoever, operating any agency for public use in the conveyance of persons or property within this state by land or by water, or both.

The term "railroad," when used in this act, includes every railroad other than a street railway, by whatsoever power operated, for public use in the conveyance of persons or property for compensation, with all bridges, ferries, tunnels, switches, spurs, tracks, stations, wharves and terminal facilities of every kind used, operated, controlled, leased or owned by or in connection with any such railroad.

The term "street railway," when used in this act, includes every railway, by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for compensation, being mainly upon, along, above or below any street, avenue, road, highway, bridge or public place in any city or town, and including all switches, spurs, tracks, rights of trackage, subways, tunnels, stations, terminals, and terminal facilities of every kind used, operated, controlled or owned by or in connection with any such street railway.

The terms "plant or equipment," when used in this act, shall mean and apply to and embrace all the real estate, easements, buildings, machinery, apparatus, devices, rolling stock, and tangible property of whatsoever kind and nature, and wherever located, used, controlled, operated, leased or owned by a public utility in the conduct of the business thereof.

The term "service" is used in this act in its broadest and most inclusive sense.

SEC. 3. There shall be a public utilities commission for the state, which commission shall be vested with and possessed of the powers and duties specified in this act, and also with all the powers necessary to enable said commission to carry out fully and effectually all the purposes of this act. Said commission shall be constituted of three members who shall be duly qualified electors of this state and who shall be severally sworn to the faithful performance of their duties, and who shall hold office for the terms of their appointment or until their successors respectively shall be appointed and qualified to act. At the present session of the general assembly, within ten days after the passage of this act, the governor, by and with the advice and consent of the senate, shall appoint three such persons to be members of the public utilities commission, one to hold office until the first day of February, A.D. 1918, one to hold office until the first day of February, A.D. 1916, and one to hold office until the first day of February, A.D. 1914. In the month of January, A.D. 1914, and in the month of January in each second year thereafter, the governor, by and with the advice and consent of the senate, shall appoint one member of said commission to hold office until the first day of February in the sixth year after his appointment, to succeed the member whose term will next expire. The governor shall designate one of the commissioners appointed by him at the present session of the general assembly as chairman of said commission, and thereafter the commissioners shall elect one of their members as chairman upon the appointment of any commissioner for a new term; or whenever a vacancy shall occur in said office.

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SEC. 18. Upon a written complaint made against any public utility by any city or town council, or by any corporation, or by any twenty-five qualified electors, that any of the rates, tolls, charges or any joint rate or rates of any public utility are in any respect unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act whatsoever of any public utility, affecting or relating to the con-

veyance of persons or property or any service in connection therewith, or affecting or relating to the production, transmission, delivery or furnishing of heat, light, water, or power, or any service in connection therewith, or the conveyance of any telephone or telegraph message, or any service in connection therewith, is in any respect unreasonable, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained or is unsafe, or the public safety is endangered thereby, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, regulations, measurements, practice, act or service complained of shall be entered by the commission without a formal public hearing. When any complaint shall be made by twenty-five or more qualified electors, such complaint shall designate one of the complainants upon whom shall be served all notices, orders and citations required by this act to be served upon complainants.

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SEC. 20. The commission shall give the public utility and the complainant, if any, ten days' notice of the time and place where and when such hearing and investigation will be held and such matters considered and determined. Both the public utility and the complainant shall be entitled to be heard and appear by counsel, and shall have process to enforce the attendance of witnesses.

SEC. 21. If upon such a hearing and investigation had under the provisions of this act, the commission shall find any existing rates, tolls, charges, or joint rate or rates of any public utility, to be unjust, unreasonable, insufficient or unjustly discriminatory, or to be preferential or otherwise in violation of any of the provisions of this act, the commission shall have power to fix, and order substituted therefor, such rates, tolls, charges, or joint rates as shall be just and reasonable.

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SEC. 26. Whenever the commission shall believe that any

of the rates, tolls, charges, or any joint rate or rates, charged, demanded, exacted or collected by any public utility are in any respect unreasonable, or unjustly discriminatory, or otherwise in violation of this act; or that any regulation, measurement, practice or act whatsoever of such public utility affecting or relating to the conveyance of persons or property, or any service in connection therewith, or affecting or relating to the production, transmission, delivery or furnishing of heat, light, water or power, or any service in connection therewith, or the conveyance of telephone or telegraph messages, or any service in connection therewith, is in any respect unreasonable, insufficient or unjustly discriminatory; or that any service of such public utility is inadequate or cannot be obtained, or is unsafe, or the public safety is endangered thereby, or that an investigation of any matter relating to a public utility should, for any reason be made, it may on its own motion, summarily investigate the same with or without notice.

SEC. 27. If, after making such summary investigation, the commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters so investigated, it shall furnish such public utility interested, a statement notifying the public utility of the matters under investigation. Ten days after such notice has been given, the commission may proceed to set a time and place for a hearing and investigation.

SEC. 28. Notice of the time and place for such hearing and investigation shall be given to the public utility and to such other interested persons as the commission shall deem necessary, as provided in Section twenty hereof, and thereafter the proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the commission relative to the matter investigated, and the same order or orders may be made in reference thereto as if such hearing and investigation had been made on complaint.

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SEC. 33. The commission may at any time upon notice to the public utility and after opportunity to be heard as provided in section twenty, rescind, alter, or amend any order fixing any rate, toll, charge, joint rate or rates, or any other order made by the commission, and certified copies of the same shall be served and take effect as herein provided for original orders.

SEC. 34. Any public utility or any complainant aggrieved by any order of the commission fixing any rate, toll, charge, joint rate or rates, or any order fixing any regulation, measurement, practice, act or service, may appeal to the supreme court for a reversal of such order on the ground that the rate, toll, charge, joint rate or rates fixed in the order are unlawful or unreasonable, or that any such regulation, measurement, practice, act or service fixed in such order is unlawful or unreasonable.

The party prosecuting the appeal shall file a petition with the clerk of the supreme court within seven days from the service of the order appealed from, and such petition shall set forth grounds upon which it is claimed that the order appealed from is unlawful or unreasonable. Thereupon the clerk of the supreme court shall issue citation to all parties in interest, including the commission, returnable at any time within thirty days from date of its issue in the discretion of the court, and the court shall hear and determine, as soon as may be, the matter, and either sustain or reverse the order appealed from. The court is hereby given authority to regulate the practice and procedure in such appeal by such rules as it may see fit to make: *Provided*, that all such appeals shall have precedence over other civil cases in the supreme court.

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SEC. 36. At any hearing in the course of such an appeal, a transcript of the testimony before the commission in such case, duly certified by the stenographer taking the same, and allowed by one of the commissioners, shall be admitted as testimony.

SEC. 37. If, upon the hearing of the appeal, newly discovered evidence shall be introduced by the appellant which is found by the court to be of such a character, and of sufficient importance, to warrant a reconsideration of the order appealed from, the court, before proceeding to render a final decision, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission and shall stay further proceeding in said action for sixty days from the date of such transmission. Upon the receipt of such evidence the commission shall consider the same and may alter, amend or rescind the order appealed from, and shall report its action thereon to the court within fifty days from the receipt of such evidence. If the commission shall rescind the order appealed from, the appeal shall be dismissed. If it shall alter or amend the same, such altered or amended order shall take the place of the original order appealed from and the court shall render its decree thereon as though made by the commission in the first instance. If the original order shall not be altered, amended or rescinded by the commission, the final decision shall be rendered upon such original order and the final decree entered in conformity therewith.

SEC. 39. If any public utility or any agent or officer of a public utility, as defined in this act, shall directly or indirectly, by any device whatsoever, or otherwise charge, demand, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it in, or affecting, or relating to, the transportation of persons or property between points within this state, or the production, transmission, delivery or furnishing of heat, light, water or power, or the conveyance of telegraph or telephone messages, or for any service in connection therewith, than that prescribed in the published schedules or tariffs then in force or established as provided herein or than it charges, demands, collects, or receives from any other person, firm or corporation for a like and contemporaneous service, under substantially similar circumstances

and conditions, such public utility shall be deemed guilty of unjust discrimination which is hereby prohibited and declared to be unlawful, and upon conviction thereof shall be fined not less than two hundred dollars nor more than five hundred dollars for each offense; and such agent or officer so offending shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than fifty dollars nor more than five hundred dollars for each offense.

SEC. 40. If any public utility shall make or give any undue or unreasonable preference or advantage to any particular person, firm, or corporation, or shall subject any particular person, firm, or corporation to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, such public utility shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred dollars nor more than five hundred dollars for each offense.

SEC. 42. The provisions of Sections thirty-nine, forty and forty-one of this act shall be subject to the following exceptions:

(a) A public utility may issue or give free transportation or service to its employees and their families, its officers, agents, surgeons, physicians and attorneys-at-law, and to the officers, agents, and employees and their families of any other public utility.

(b) With the approval of the commission, any public utility may give free transportation or service, upon such conditions as such public utility may impose, or grant special rates therefor to the state, to any town or city, or to any water or fire district, and to the officers thereof, for public purposes, and also to any special class or classes of persons, not otherwise referred to in this section, in cases where the same shall seem to the commission just and reasonable, or required in the interests of the public, and not unjustly discriminatory.

(c) With the approval of the commission, any public

utility operating a railroad or street railway may furnish to the publishers of newspapers and magazines, and to their employees, passenger transportation in return for advertising in such newspapers or magazines at full rates.

(d) With the approval of the commission, any public utility may exchange its service for the service of any other public utility furnishing a different class of service.

(e) Any free frank, pass, transportation or service heretofore issued, given or authorized for use or enjoyment during the year 1912, or any portion thereof, shall remain lawful and of full effect under the condition and during the period for which it was issued, given or authorized during the year 1912.

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SEC. 48 (*As amended by Chapter 1651, Pub. Laws, 1918*). Every public utility shall file with the commission, within a time to be fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection therewith or performed by any public utility controlled or operated by it. A copy of so much of said schedules as the commission shall deem necessary for the use of the public shall be printed in plain type, or typewritten, and kept on file in every station or office of such public utility where payments are made by the consumers or users, open to the public in such form and place as to be readily accessible and conveniently inspected, and as the commission may order. The commission may determine and prescribe the form in which the schedules, required by this section to be kept open to public inspection, shall be prepared and arranged, provided, that with respect to public utilities subject to the federal "Act to Regulate Commerce," so called, the form of such schedules shall be that from time to time prescribed by the Interstate Commerce Commission. No change shall be made in the rates, tolls, and charges which have been filed and published by any

public utility in compliance with the requirements of this section, except that after thirty days' notice to the commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rates, tolls or charges will go into effect. Whenever the commission receives such notice of any change or changes proposed to be made in any schedule filed under the provisions of this section, it shall have power either upon complaint as specified in Section eighteen hereof, or upon its own motion and upon such notice as provided for in Section twenty hereof, to hold a public hearing and make investigation as to the propriety of such proposed change or changes. After notice of any such investigation, the commission shall have power by any order served upon the public utility affected to suspend the taking effect of such change or changes pending the decision thereon, but not for a longer period than three months beyond the time when such change or changes would otherwise take effect. After such hearing and investigation, either upon complaint as specified in Section eighteen hereof or upon its own motion the commission may make such order in reference to any proposed rate, toll or charge as may be proper. At any such hearing involving any proposed increase in any rate, toll or charge, the burden of proof to show that such increase is necessary in order to obtain a reasonable compensation for the service rendered shall be upon the public utility: *Provided*, that the commission may, in its discretion and for good cause shown, allow changes within less time than required by the notice herein specified, and without holding the hearing and investigation herein provided for, or modify the requirements of this section with respect to filing and publishing tariffs either in the particular instance or by general order applicable to special or particular circumstances or conditions.

EXTRACTS FROM CHAPTER 339 OF THE GENERAL
LAWS OF RHODE ISLAND, 1923.

SEC. 25. Any party aggrieved by a final decree of the superior court in any cause in equity or proceeding following the course of equity may, within thirty days after the entry thereof, and any party aggrieved by a final judgment in any proceeding in, or in the nature of, a prerogative writ, except habeas corpus, may, within five days after entry of such judgment, appeal to the supreme court. Such appeal shall be taken by filing a claim of appeal, with a statement of the reasons thereof, in the office of the clerk of the court from which the appeal is taken. The appellant, at the time of filing such claim, shall file a written request to the court stenographer for a transcript of the testimony and shall advance the estimated fees of the court stenographer for transcribing such testimony, as may be required; whereupon, and upon compliance with such orders as may be made under the provisions of section twenty-eight of this chapter, all proceedings under the decree or judgment appealed from shall be stayed.

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SEC. 27. Upon an appeal being taken and such transcript of the testimony as may be required being allowed and returned, as aforesaid, or in case of the disallowance or of failure to allow and return the transcript within twenty days from the filing thereof with the clerk, the clerk of the superior court shall forthwith certify the cause and all the papers therein to the supreme court. Thereupon, on motion of either party, or by agreement, the cause may be assigned for hearing on the question of the correctness of the transcript.

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SEC. 30. No new testimony shall be presented to the supreme court on appeal, but in case of accident or mistake, or erroneous ruling excluding evidence in the superior court,

the supreme court may grant leave to parties to present further evidence, and may provide by general rule or special order for the taking of such evidence.

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SEC. 32. Upon any cause being brought by appeal to the supreme court that court shall hear and determine such appeal and affirm, reverse, or modify the decree or judgment appealed from and make such orders and decrees therein as shall be just.

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IN THE
Supreme Court of the United States

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OCTOBER TERM, 1926.

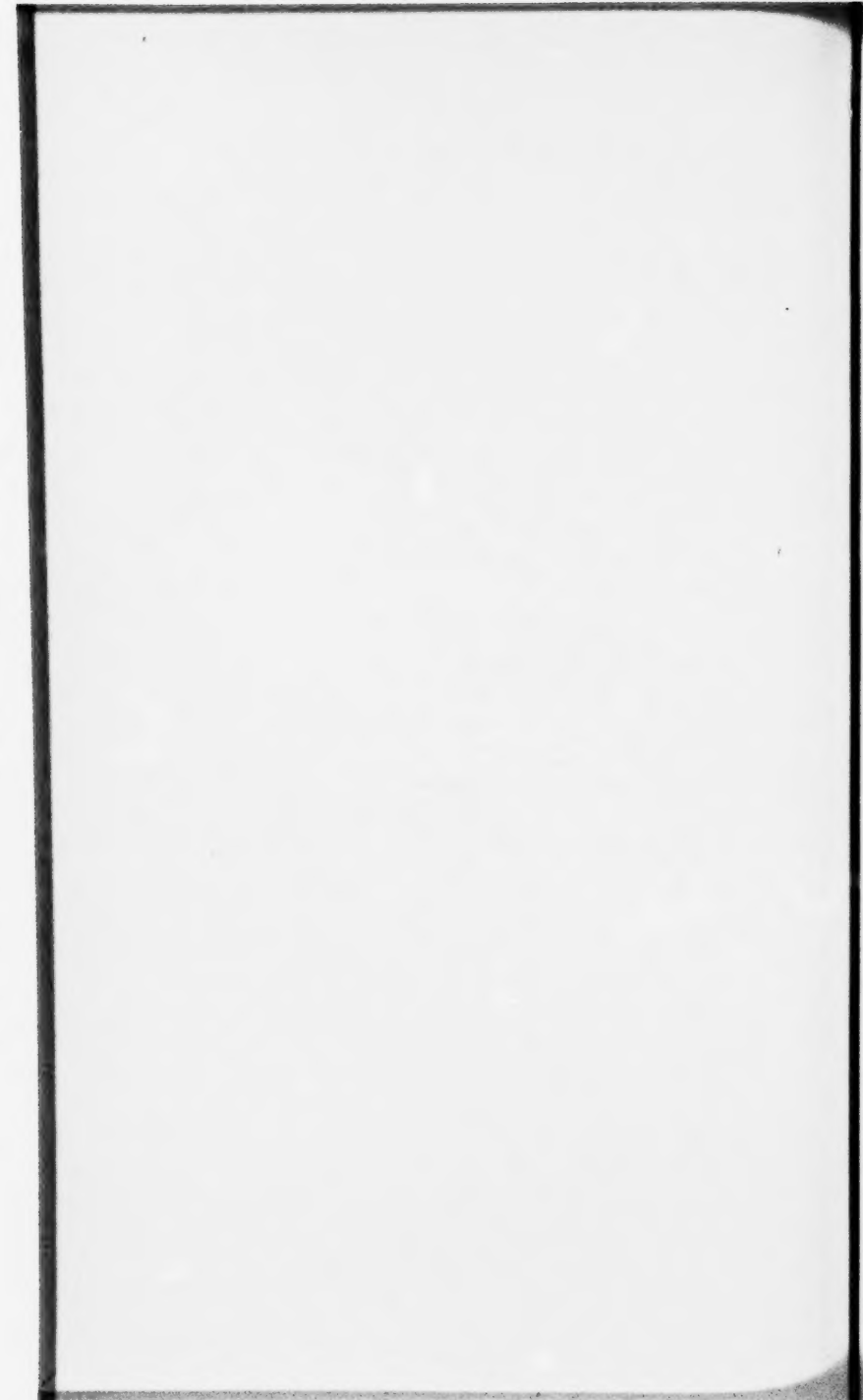
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No. 217.
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PUBLIC UTILITIES COMMISSION OF RHODE ISLAND ET AL.,
vs.
ATTLEBORO STEAM & ELECTRIC COMPANY.

—
MOTION
OF SOUTHERN SIERRAS POWER COMPANY,
FOR LEAVE TO FILE BRIEF AS *AMICUS*
CURIAE.

—
CHAS. F. CONSAUL,
CHAS. C. HELTMAN,
Attorneys for The Southern
Sierras Power Company,
amicus curiae.

NEWMAN JONES,
Of Counsel.



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IN THE
Supreme Court of the United States

OCTOBER TERM, 1926.

No. 217.

PUBLIC UTILITIES COMMISSION OF RHODE ISLAND ET AL.,

vs.

ATTLEBORO STEAM & ELECTRIC COMPANY.

MOTION
OF SOUTHERN SIERRAS POWER COMPANY,
FOR LEAVE TO FILE BRIEF AS *AMICUS*
CURIAE.

Comes now the Southern Sierras Power Company,
and moves that it be granted leave of this honorable
court to file a brief in the above-described cause, as
amicus curiae.

As grounds for this motion, said company represents
to the court:

1. That it is a Wyoming corporation, doing business as a public service company in California; that it generates and sells electric power in the State of California, under regulations by the Railroad Commission of that State; that its business is primarily that of distributing and selling power directly to California consumers.
2. That within the State of California it also sells power to a public service corporation of Arizona, for distribution and sale in Arizona; that such power is delivered in California, to the transmission line of the Arizona Company, and is transmitted from California to Arizona by the Arizona company.
3. That in a suit now pending in the District Court of the United States for Arizona, entitled *The Southern Sierras Power Company vs. Arizona Edison Company*, being Case No. E-153, Phoenix, the answer filed by defendant raises the same point involved in the cause now pending in this court, to wit, the constitutional power of a state public utility commission to fix rates at which electric power may be sold for transmission to, and distribution and sale in a different State.

Respectfully submitted,

THE SOUTHERN SIERRAS POWER COMPANY,

By CHAS. F. CONSAUL,
CHAS. C. HELTMAN,
Attorneys.

NEWMAN JONES,
Of Counsel.

BRIEF.

It is the desire of the Southern Sierras Power Company, appearing as friend of the court, to call to notice additional reasons for holding that it lies within the power of the Public Utility Commission of Rhode Island to regulate rates to be charged by a public service corporation of that state, for electric power supplied, even though such power is supplied to a consumer at the state line, for actual use in another state.

As clearly laid down in various decisions, certain functions of the respective states may be exercised, even though they may result indirectly or to some extent in affecting interstate commerce, *provided*, that the Federal government shall not have exercised its power to control or regulate such phase of interstate commerce as may be so affected. (*Simpson v. Shepard*, 230 U. S. 352, *Minnesota Rate Case*.)

In support of that thought, attention is asked to the fact that the Federal government has thus far sought to exercise control over rates to be charged for supply of electrical power, only in the legislation commonly known as the "Federal Water Power Act," approved June 10, 1920 (41 Stats. 1063), with amendment of March 3, 1921 (41 Stats. 1353).

The general purpose of that act is to provide for the development of water power projects upon public lands and upon navigable waters of the United States, primarily under licenses to be granted by the United States to private persons or corporations, or to municipal or state agencies.

Secs. 19 and 20 of said act deal with the matter of rates and other phases of regulation of public services. They read as follows:

Sec. 19. That as a condition of the license, every licensee hereunder which is a public-service corporation or a person, association or corporation owning or operating any project and developing, transmitting, or distributing power for sale or use in public service, shall abide by such reasonable regulation of the services to be rendered to customers or consumers of power, and of rates and charges of payment therefor, as may from time to time be prescribed by any duly constituted agency of the State in which the service is rendered or the rate charged. That in case of the development, transmission, or distribution, or use in public service of power by any licensee hereunder or by its customer engaged in public service within a State which has not authorized and empowered a commission or other agency or agencies within said State to regulate and control the services to be rendered by such licensee or by its customer engaged in public service, or the rates and charges of payment therefor, or the amount or character of securities to be issued by any of said parties, it is agreed as a condition of such license that jurisdiction is hereby conferred upon the commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control; Provided, That the jurisdiction of the commission shall cease and determine as to each specific matter of regulation and control prescribed in this section as soon as the State shall have provided a commission or other authority for the regulation and control of that specific matter.

Sec. 20. That when said power or any part thereof shall enter into interstate or foreign commerce the rates charged and the service rendered by any such licensee, or by any subsidiary corporation, the stock of which is owned or con-

trolled directly or indirectly by such licensee, or by any person, corporation, or association purchasing power from such licensee for sale and distribution or use in public service, shall be reasonable, non-discriminatory, and just to the customer, and all unreasonable discriminatory and unjust rates or services are hereby prohibited and declared to be unlawful; and whenever any of the States directly concerned has not provided a commission or other authority to enforce the requirements of this section within such State or to regulate and control the amount and character of securities to be issued by any of such parties or such States are unable to agree through their properly constituted authorities on the services to be rendered or on the rates or charges of payment therefor, or on the amount or character of securities to be issued by any of said parties, jurisdiction is hereby conferred upon the commission, upon complaint of any person aggrieved, upon the request of any State concerned, or upon its own initiative, to enforce the provisions of this section to regulate and control so much of the services rendered, and of the rates and charges of payment therefor as constitute interstate or foreign commerce, and to regulate the issuance of securities by the parties included within this section, and securities issued by the licensee subject to such regulations shall be allowed only for the *bona fide* purpose of financing and conducting the business of such licensee.

The administration of the provisions of this section, so far as applicable, shall be according to the procedure and practice in fixing and regulating the rates, charges, and practices of railroad companies as provided in the act to regulate commerce approved February 4, 1887, as amended, and that the parties subject to such regulation shall have the same rights of hearing, defense, and review as said companies in such cases. * * *

The intent of Congress is made plain in Sec. 19, that the Federal government shall scrupulously refrain from entering the sphere of regulation within any state which has itself established agencies for such regulation; but that the Federal Power Commission is to function as to this matter only in the absence of such state agency of control.

Sec. 20, however, lays down certain rules of general application and affecting the furnishing of power in *interstate commerce, and generated under a Federal license granted under this act.*

This section provides that when "*said power*" (*i. e.*, power so generated) shall enter into interstate or foreign commerce, then rates charged

shall be reasonable, nondiscriminatory, and just to the customer, and all unreasonable discriminatory and unjust rates or services are hereby prohibited and declared to be unlawful.

It is further provided that, in event any state concerned has not established an agency to enforce the terms of this section, or if more than one state shall be concerned, and the states so concerned shall be unable to agree on services to be rendered or rates to be charged, then the Federal Power Commission shall act to enforce the terms of this section.

So far as the opinion of the Supreme Court of Rhode Island lays down any principle of general application, it would seem to be, in substance as follows:

1. A public service corporation engaged in generation and sale of electric power, either organized or doing business in a state having an established agency for control of rates for sale of such power, may make contracts with corporations of

another state, providing for sale of such power, for distribution in such other state, and contracts so made are not subject to the rate-making supervision of the state in which such power is generated.

2. That this principle or rule applies even though the operation of such contracts results in a financial loss to the producing corporation, to such an extent as to require that other purchasers of power within the state where generated must pay more than a fair price for such power, based on cost of production, in order to afford to such producing corporation a fair and reasonable return upon its invested capital.

A necessary corollary to the principle so laid down would seem to be fairly stated as follows:

3. Electric power generated in one state by a public service corporation of that state, may be sold by such corporation at the state line (or within the state where generated) to a public service corporation of another state, for distribution to consumers in such other state, and the state wherein such power is so generated is without right to regulate or prescribe the rate at which it shall be so sold. This because such sale would constitute interstate commerce, beyond the constitutional power of any state to control, and even though the Federal government has never exercised its constitutional power to regulate or control such activity.

While not pertinent to the case at bar, counsel earnestly ask that the court consider the natural effect of such freedom from regulation of corporations engaged in the generation of hydro-electric power in the semi-arid states of the West, where water is to the physical development and life of communities what blood is to the human body.

Under such freedom from restraint as is plainly contemplated by the decision of the Rhode Island court, it would become legally possible for a public service corporation operating in California to make use of a natural resource of that state (water), for production of electric power, and by the mere act of selling such power to a corporation of another state, for use in such other state, to evade *any* regulation of rates as to power so sold, by either state.

Counsel cannot believe that this court will care to recognize any such rule or principle, which would probably have such a wide effect in freeing from proper and reasonable legal restraint public service corporations which might be so conducted as to become instruments of oppression, beyond the control of any save Federal agency, as yet never established.

Going but a step further in the logical development of the thought, it would be possible for *both* such corporations, to evade control or regulation in matter of rates, by either state.

It is firmly established by court decisions that a public service corporation is entitled to a fair return upon its investment.

If, in the case before this court, there can exist no state control of the prices at which the Rhode Island company may sell and the Massachusetts company may buy, electric power generated in Rhode Island, for distribution and sale in Massachusetts, then no public utility commission of Massachusetts will have power to fix rates to be charged consumers in Massachusetts, by the company operating in that state, save as such rates are necessarily based upon the cost of the power to the distributing company; and that cost, under the theory of the Rhode Island Supreme Court, would be beyond the control of either state.

Hence it would follow that the necessary basis for the fixing of rates to consumers would be beyond *any* state or local regulation.

The thought which we here endeavor to express is that which we believe was in the mind of this court when it decided the case of *Pennsylvania Gas Co. v. Public Service Commission of N. Y.*, 252 U. S. 23.

In that case it appeared that the company was engaged in transporting its gas from Pennsylvania into New York, where it distributed such gas directly to individual consumers. The rate to be charged consumers was fixed by the New York Commission, and the company protested the action, asserting that it was an attempt to regulate interstate commerce.

The opinion of this court was that, while the manner in which the company business was conducted gave it the status of interstate commerce, yet the distributing portion of the business possessed such a local character as must necessarily be subject to regulation in public interest, *by some agency*; that as Congress had not sought to exercise the Federal power to so regulate, the *ad interim* right of the state to regulate would not be denied.

The concluding paragraphs of the opinion in that case are as follows:

It may be conceded that the local rates may affect the interstate business of the company. But this fact does not prevent the state from making local regulations of a reasonable character. Such regulations are always subject to the exercise of authority by Congress, enabling it to exert its superior power under the commerce clause of the Constitution.

The principles announced, often reiterated in the decisions of this court, were applied in the

judgment affirmed by the Court of Appeals of New York, and we agree with that court that until the subject matter is regulated by congressional action, the exercise of authority conferred by the state upon the Public Service Commission is not violative of the commerce clause of the Federal Constitution.

At first glance, it might appear that two decisions are in opposition to the thoughts herein suggested, but careful analysis of those decisions will dispell any such impression.

In *Public Utilities Commission v. Landon*, receiver, 249 U. S. 236, Landon was receiver of the Kansas Natural Gas Co., a Delaware corporation.

The gist of the case was that the company had made contracts with certain local gas companies in Missouri and Kansas, whereby gas (mostly secured in Oklahoma) was conveyed into Missouri and Kansas, and there delivered into the mains of the local companies, for distribution to consumers.

In compensation for gas so supplied local companies, the distributing companies were to pay over to the supply company an agreed proportion of the retail sales price. Therefore, the local sales price to consumers measured the sales price as between the supply company and the distributing companies; but there was no privity between the supply company and the consumers.

The State Utility Commissions and various municipalities were sued by the receiver of the supply company, to prevent interference with an increase in the prices to be paid by consumers for gas consumed, such increase being alleged to be necessary for the purpose of securing to the supply company an adequate price for gas supplied.

It was held that the business of the supply company and its receivers was interstate business, and was therefore beyond control by State agencies; but that the interstate nature of the business ceased with delivery by the supply company of gas to the mains of the distributing companies; that the subsequent distribution and sale of the gas to the actual consumers remained intrastate business, and as such was subject to state control; that the effect of rates prescribed by state agencies for sale to consumers affected interstate commerce only indirectly, and therefore the fixing of such rates was a proper exercise of the power of the State.

Practically the same parties were later before the court in Missouri *ex rel. Barrett v. Kansas Natural Gas Co.*, 265 U. S. 298. It appeared in that case that the Kansas Natural Gas Co. had raised rates to various distributing companies in Missouri and Kansas, and that effort had been made by state agencies to prevent such increase of prices.

It was again held that the transactions between the supply company and local distributors, constituted interstate commerce, not within the regulatory power of the states.

The case of *Pennsylvania Gas Co. v. Public Service Commission* (*supra*), 252 U. S. 231, was distinguished, and the court said:

The business of supplying, on demand, local consumers, is a local business, even though the gas be brought from another state, and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case the local interest is paramount, and the interference with in-

terstate commerce, if any, indirect and of minor importance. But here the sale of gas is in wholesale quantities, not to consumers, but to distributing companies for resale to consumers in numerous cities and communities in different states. The transportation, sale, and delivery constitute an unbroken chain, fundamentally interstate from beginning to end, and of such continuity as to amount to an established course of business. The paramount interest is not local but national,—admitting of and requiring uniformity of regulation. Such uniformity, even though it be the uniformity of governmental non-action, may be highly necessary to preserve equality of opportunity and treatment among the various communities and states concerned. See, for example: *Welton v. Missouri*, 91 U. S. 275, 282; *Hall v. De Cuir*, 95 U. S. 485, 490.

Attention is asked to one statement of a significant fact concerning the Kansas Natural Gas Co., found in the opinion in *Missouri ex rel. Barrett v. Kansas Natural Gas Co.*, 265 U. S., 298, as follows:

The business of the Supply Company, with an exception not important here, is wholly interstate. The sales and deliveries are in large quantities, not for consumption, but for resale to consumers.

The circumstance that in the late opinion, this statement was made would assuredly indicate that the fact stated was a material one. In short, the business of the Kansas Natural Gas Co. was a wholesale one, and was an interstate business. Seemingly it owed no obligation directly to consumers; it had no privity with them. *It was not itself a public service corporation*, entitled to have rates so fixed as to bring a reasonable

return upon its investment, a right recognized as inhering in the ordinary business of a public utility.

Had it appeared that the company was engaged in distributing gas directly to consumers, in the states of Oklahoma and Kansas, where the gas was produced, and had the agency of one of those states attempted to regulate the sales price, quite a different case would have been presented.

The above-quoted statement of fact, we believe, distinguishes the cases in which the Kansas Natural Gas Company was a party, from the instant case, where it plainly appears that the primary business of the Narragansett Company is that of generating and distributing electric power directly to consumers in the state of Rhode Island, as a public utility of that state.

This circumstance gives rise to certain obligation from the Narragansett Company to the consumer customers of Rhode Island, such as is necessarily subject to control by the state. If the company, by selling power at a loss to the Attleboro Company, finds itself where it must charge unduly high rates to its own consumer customers, then it fails to discharge its obligation to them.

It is therefore submitted that the cases of *Public Utilities Commission v. Landon, Receiver*, 249 U. S. 236, and of *Missouri ex rel. Barrett, v. Kansas Natural Gas Co.*, 265 U. S., 298, are not controlling here, but should be distinguished; that the underlying theory applicable is found announced in *Simpson v. Shepard (Minnesota Rate Case)*, 230 U. S. 352, 433, where this court said:

Nor, in the absence of Federal action, may we deny effect to the laws of the state enacted within

the field which it is entitled to occupy until its authority is limited through the exertion by Congress of its paramount constitutional power,

and in *Pennsylvania Gas Co. v. Public Service Commission*, 252 U. S. 23, where the same principle was laid down and applied.

The theory of the last two cases cited, applied to the instant case, would bring about a reversal of the decision of the Rhode Island Supreme Court, and it is submitted that such reversal should result.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 217.—OCTOBER TERM, 1926.

Public Utilities Commission of Rhode Island and Narragansett Electric Lighting Company, Petitioners, vs. Attleboro Steam & Electric Company.	} On Writ of Certiorari to the Supreme Court of the State of Rhode Island.
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[January 3, 1927.]

Mr. Justice SANFORD delivered the opinion of the Court.

This case involves the constitutional validity of an order of the Public Utilities Commission of Rhode Island putting into effect a schedule of prices applying to the sale of electric current in interstate commerce.

The Narragansett Electric Lighting Company is a Rhode Island corporation engaged in manufacturing electric current at its generating plant in the city of Providence and selling such current generally for light, heat and power. The Attleboro Steam & Electric Company is a Massachusetts corporation engaged in supplying electric current for public and private use in the city of Attleboro and its vicinity in that State.

In 1917 these companies entered into a contract by which the Narragansett Company agreed to sell, and the Attleboro Company to buy, for a period of twenty years, all the electricity required by the Attleboro Company for its own use and for sale in the city of Attleboro and the adjacent territory, at a specified basic rate; the current to be delivered by the Narragansett Company at the State line between Rhode Island and Massachusetts and carried over connecting transmission lines to the station of the Attleboro Company in Massachusetts, where it was to be metered. The Narragansett Company filed with the Public Utilities Commission of Rhode Island a schedule setting out the rate and general terms of the contract and was authorized by the Commission to grant the Attleboro Company the special rate therein shown;

and the two companies then entered upon the performance of the contract. Current was thereafter supplied in accordance with its terms; and the generating plant of the Attleboro Company was dismantled.

In 1924 the Narragansett Company—having previously made an unsuccessful attempt to obtain an increase of the special rate to the Attleboro Company¹—filed with the Rhode Island Commission a new schedule, purporting to cancel the original schedule and establish an increased rate for electric current supplied, in specified minimum quantities, to electric lighting companies for their own use or sale to their customers and delivered either in Rhode Island or at the State line. The Attleboro Company was in fact the only customer of the Narragansett Company to which this new schedule would apply.²

The Commission thereupon instituted an investigation as to the contract rate and the proposed rate. After a hearing at which both companies were represented, the Commission found that, owing principally to the increased cost of generating electricity, the Narragansett Company in rendering service to the Attleboro Company was suffering an operating loss, without any return on the investment devoted to such service, while the rates to its other customers yielded a fair return; that the contract rate was unreasonable and a continuance of service to the Attleboro Company under it would be detrimental to the general public welfare and prevent the Narragansett Company from performing its full duty to its other customers;³ and that the proposed rate was reasonable and would yield a fair return, and no more, for the service to the Attleboro Com-

¹In 1921 the Commission had authorized the Narragansett Company to put into effect a schedule increasing the special rate to the Attleboro Company; but its enforcement had been enjoined on the ground of the lack of an essential finding by the Commission. *Attleboro Steam & E. Co. v. Narragansett E. Light Co.* (D. C.), 295 Fed. 895.

²No other electric lighting company supplied by the Narragansett Company required, either then or prospectively, the quantity of current necessary to make the proposed rate applicable. The Commission stated that the Attleboro Company was the only customer of the Narragansett Company affected by the proposed rate; and the brief for the petitioners states that the Attleboro Company was the only customer then falling within the schedule class.

³The evidence showed that in 1923 the Narragansett Company had 71,554 customers, and that about one thirty-fifth of the current which it produced went to the Attleboro Company.

pany. And the Commission thereupon made an order putting into effect the rate contained in the new schedule.

From this order the Attleboro Company prosecuted an appeal to the Supreme Court of Rhode Island which—considering only one of the various objections urged—held, on the authority of *Missouri v. Kansas Gas Co.*, 265 U. S. 298, that the order of the Commission imposed a direct burden on interstate commerce and was invalid because of conflict with the commerce clause of the Constitution; and entered a decree reversing the order and directing that the rate investigation be dismissed. 46 R. I. 496.

It is conceded, rightly, that the sale of electric current by the Narragansett Company to the Attleboro Company is a transaction in interstate commerce, notwithstanding the fact that the current is delivered at the State line. The transmission of electric current from one State to another, like that of gas, is interstate commerce, *Coal & Coke Co. v. Pub. Serv. Comm.*, 84 W. Va. 662, 669, and its essential character is not affected by a passing of custody and title at the state boundary not arresting the continuous transmission to the intended destination. *Peoples' Gas Co. v. Pub. Serv. Comm.*, 270 U. S. 550, 554.

The petitioners contend, however, that the Rhode Island Commission cannot effectively exercise its power to regulate the rates for electricity furnished by the Narragansett Company to local consumers, without also regulating the rates for the other service which it furnishes; that if the Narragansett Company continues to furnish electricity to the Attleboro Company at a loss this will tend to increase the burden on the local consumers and impair the ability of the Narragansett Company to give them good service at reasonable prices; and that, therefore, the order of the Commission prescribing a reasonable rate for the interstate service to the Attleboro Company should be sustained as being essentially a local regulation, necessary to the protection of matters of local interest, and affecting interstate commerce only indirectly and incidentally. In support of this contention they rely chiefly upon *Pennsylvania Gas Co. v. Pub. Serv. Com.*, 252 U. S. 23; and the controlling question presented is whether the present case comes within the rule of the *Pennsylvania Gas Co.* case or that of the *Kansas Gas Co.* case upon which the Attleboro Company relies.

In the *Pennsylvania Gas Co.* case, the Company transmitted natural gas by a main pipe line from the source of supply in

Pennsylvania to a point of distribution in a city in New York, which it there subdivided and sold at retail to local consumers supplied from the main by pipes laid through the streets of the city. In holding that the New York Public Service Commission might regulate the rate charged to these consumers, the court said that while a state may not "directly" regulate or burden interstate commerce, it may in some instances, until the subject-matter is regulated by Congress, pass laws "indirectly" affecting such commerce, when needed to protect or regulate matters of local interest; that the thing which the New York Commission had undertaken to regulate, while part of an interstate transmission, was "local in its nature," pertaining to the furnishing of gas to local consumers, and the service rendered to them was "essentially local," being similar to that of a local plant furnishing gas to consumers in a city; and that such "local service" was not of the character which required general and uniform regulation of rates by congressional action, even if the local rates might "affect" the interstate business of the Company.

In the *Kansas Gas Co.* case the Company, whose business was principally interstate, transported natural gas by continuous pipe lines from wells in Oklahoma and Kansas into Missouri, and there sold and delivered it to distributing companies, which then sold and delivered it to local consumers. In holding that the rate which the Company charged for the gas sold to the distributing companies—those at which these companies sold to the local consumers not being involved—was not subject to regulation by the Public Utilities Commission of Missouri, the court said that, while in the absence of congressional action a State may generally enact laws of internal police, although they have an indirect effect upon interstate commerce, "the commerce clause of the Constitution, of its own force, restrains the States from imposing direct burdens upon interstate commerce," and a state enactment imposing such a "direct burden" must fall, being a direct restraint of that which in the absence of Federal regulation should be free, *Minnesota Rate Cases*, 230 U. S. 352, 396; that the sale and delivery to the distributing companies was "an inseparable part of a transaction in interstate commerce—not local but essentially national in character—and enforcement of a selling price in such a transaction places a direct burden upon such commerce incon-

sistent with that freedom of interstate trade which it was the purpose of the commerce clause to secure and preserve;" that in the *Pennsylvania Gas Co.* case the decision rested on the ground that the service to the consumers for which the regulated charge was made, was "essentially local," and the things done were after the business in its essentially national aspect had come to an end—the supplying of local consumers being "a local business", even though the gas be brought from another state, in which the local interest is paramount and the interference with interstate commerce, if any, indirect and of minor importance; but that in the sale of gas in wholesale quantities, not to consumers, but to distributing companies for resale to consumers, where the transportation, sale and delivery constitutes an unbroken chain, fundamentally interstate from beginning to end, "the paramount interest is not local but national, admitting of and requiring uniformity of regulation," which, "even though it be the uniformity of governmental non-action, may be highly necessary to preserve equality of opportunity and treatment among the various communities and States concerned."

It is clear that the present case is controlled by the *Kansas Gas Co.* case. The order of the Rhode Island Commission is not, as in the *Pennsylvania Gas Co.* case, a regulation of the rates charged to local consumers, having merely an incidental effect upon interstate commerce, but is a regulation of the rates charged by the Narragansett Company for the interstate service to the Attleboro Company, which places a direct burden upon interstate commerce. Being the imposition of a direct burden upon interstate commerce, from which the State is restrained by the force of the Commerce Clause, it must necessarily fall, regardless of its purpose. *Shafer v. Farmers Grain Co.*, 268 U. S. 189, 199; *Real Silk Mills v. Portland*, 268 U. S. 325, 336; *Di Santo v. Pennsylvania*, this day decided. It is immaterial that the Narragansett Company is a Rhode Island corporation subject to regulation by the Commission in its local business, or that Rhode Island is the State from which the electric current is transmitted in interstate commerce, and not that in which it is received, as in the *Kansas Gas Co.* case. The forwarding state obviously has no more authority than the receiving state to place a direct burden upon interstate commerce. *Pennsylvania v. West Virginia*, 262 U. S. 553, 596. Nor is it material

that the general business of the Narragansett Company appears to be chiefly local, while in the *Kansas Gas Co.* case the Company was principally engaged in interstate business. The test of the validity of a state regulation is not the character of the general business of the company, but whether the particular business which is regulated is essentially local or national in character; and if the regulation places a direct burden upon its interstate business it is none the less beyond the power of the state because this may be the smaller part of its general business. Furthermore, if Rhode Island could place a direct burden upon the interstate business of the Narragansett Company because this would result in indirect benefit to the customers of the Narragansett Company in Rhode Island, Massachusetts could, by parity of reasoning, reduce the rates on such interstate business in order to benefit the customers of the Attleboro Company in that State, who would have, in the aggregate, an interest in the interstate rate correlative to that of the customers of the Narragansett Company in Rhode Island. Plainly, however, the paramount interest in the interstate business carried on between the two companies is not local to either State, but is essentially national in character. The rate is therefore not subject to regulation by either of the two States in the guise of protection to their respective local interests; but, if such regulation is required it can only be attained by the exercise of the power vested in Congress. See *Covington Bridge Co. v. Kentucky*, 154 U. S. 204, 220; *Hanley v. Kansas City S. Ry. Co.*, 187 U. S. 617, 620.

The decree is accordingly

Affirmed.

Mr. Justice BRANDEIS, dissenting.

The business of the Narragansett Company is an intrastate one. The only electricity sold for use without the State is that agreed to be delivered to the Attleboro Company. That company takes less than 3 per cent. of the electricity produced and manufactured by the Narragansett, which has over 70,000 customers in Rhode

Island. The problem is essentially local in character. The Commission found as a fact that continuance of the service to the Attleboro Company at the existing rate would prevent the Narragansett from performing its full duty towards its other customers and would be detrimental to the general public welfare. It issued the order specifically to prevent unjust discrimination and to prevent unjust increase in the price to other customers. The Narragansett, a public service corporation of Rhode Island, is subject to regulation by that State. The order complained of is clearly valid as an exercise of the police power, unless it violates the Commerce Clause.

The power of the State to regulate the selling price of electricity produced and distributed by it within the State and to prevent discrimination is not affected by the fact that the supply is furnished under a long-term contract. *Union Dry Goods Co. v. Georgia Public Service Corporation*, 248 U. S. 372. If the Commission lacks the power exercised, it is solely because the electricity is delivered for use in another State. That fact makes the transaction interstate commerce, and Congress has power to legislate on the subject. It has not done so, nor has it legislated on any allied subject, so there can be no contention that it has occupied the field. Nor is this a case in which it can be said that the silence of Congress is a command that the Rhode Island utility shall remain free from the public regulation—that it shall be free to discriminate against the citizens of the State by which it was incorporated and in which it does business. That State may not, of course, obstruct or directly burden interstate commerce. But to prevent discrimination in the price of electricity wherever used does not obstruct or place a direct burden upon interstate commerce. Such regulation or action is unlike the burden imposed where a transportation rate is fixed, *Wabash, St. Louis & Pacific R. R. Co. v. Illinois*, 118 U. S. 557, or where property moving in interstate commerce is taxed. *Champlain Realty Co. v. Brattleboro*, 260 U. S. 366. The burden resulting from the order here in question resembles more nearly that increase in the cost of an article produced and to be delivered which arises by reason of higher taxes laid upon plant, operations or profits, *Old Dominion S. S. Co. v. Virginia*, 198 U. S. 299, 305; *American Mfg. Co. v. St. Louis*, 250 U. S. 459, or which arises by reason of expenditures required under police regulations.

Pittsburgh & Southern Coal Co. v. Louisiana, 156 U. S. 590; *Sligh v. Kirkwood*, 237 U. S. 52; *Merchants Exchange v. Missouri*, 248 U. S. 365, 368. It is like the regulation sustained in *Pennsylvania Gas Co. v. Public Service Commission*, 252 U. S. 23, where an order of the New York Public Service Commission fixed the rates at which gas piped from without the State and delivered directly to the consumers might be sold.

The case at bar seems to me distinguishable from others in which the state regulation has been held precluded by the Commerce Clause. In *Missouri v. Kansas Natural Gas Co.*, 265 U. S. 298, this Court held void a regulation which fixed the rates at which gas piped from without the State and delivered to distributing companies could be sold to the latter. The *Pennsylvania Gas Co.* case was distinguished in that there "the things done were local. . . . The business of supplying on demand, local consumers is a local business, even though the gas be brought from another State and drawn directly from interstate mains. . . . In such case the local interest is paramount. . . . But here the sale of gas is in wholesale quantities, not to consumers, but to distributing companies for resale to consumers in numerous cities . . . in different states. The paramount interest is not local but national . . ." (p. 309). It was there emphasized that the "business of the Supply Company, with an exception not important here, [was] wholly interstate." (p. 306.) In *Shafer v. Farmers Grain Co.*, 268 U. S. 189, 192, where a North Dakota regulation was held invalid, "about 90 per cent. [of the wheat was] sold within the state to buyers who purchase for shipment, and ship, to terminal markets outside the state" and the "price paid at the country elevators rises and falls with the price at the terminal markets." In these two cases the burden was deemed a direct one because the businesses were essentially interstate. In *Pennsylvania v. West Virginia*, 262 U. S. 553, the state regulation was held void as discriminating against interstate commerce.

In my opinion the judgment below should be reversed.